

This is **Exhibit "K"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



FIRST LIEN PRIORITY CREDIT AGREEMENT

dated as of May 4, 2023

by and among

CYXTERA DC PARENT HOLDINGS, INC.  
as Initial Holdings,

CYXTERA DC HOLDINGS, INC.,  
as the Borrower,

The Lenders Party Hereto,

and

Wilmington Savings Fund Society, FSB,  
as Administrative Agent and Collateral Agent,

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Exhibit Q	Form of Mortgage
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FIRST LIEN PRIORITY CREDIT AGREEMENT dated as of May 4, 2023 (this “Agreement”), by and among CYXTERA DC PARENT HOLDINGS, INC., a Delaware corporation (“Initial Holdings”), CYXTERA DC HOLDINGS, INC., a Delaware corporation, as borrower (in such capacity, the “Borrower”), the LENDERS party hereto, and Wilmington Savings Fund Society, FSB, as Administrative Agent and as Collateral Agent.

Capitalized terms used in the recitals below that are not otherwise defined therein have the respective meanings set forth in Section 1.01.

WHEREAS, the Borrower has requested the Lenders to extend \$50,000,000 in aggregate principal amount of Initial Term Loans on the Effective Date.

NOW THEREFORE, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“ABR Borrowing” means a Borrowing of an ABR Loan.

“ABR Loan” means a Loan that bears interest based on the ABR.

“Account Control Agreement” means an agreement among a Loan Party, a depository bank or securities intermediary, as applicable, and the Collateral Agent, which agreement is in a form reasonably acceptable to the Collateral Agent (acting at the Direction of the Required Lenders) and which provides the Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) described therein, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time. For the avoidance of doubt, it is understood and agreed that each such account control agreement shall comprise a Loan Document and a Security Document for all purposes of the Loan Documents.

“Accounting Changes” has the meaning specified in Section 1.04(d).

“Actual Borrower Professional Fees” means with respect to any period, the amount of restructuring and professional fees expended during such period for which the Loan Parties are liable for payment (including as reimbursement to any Secured Party or the Specified Lender Advisors) that correspond to the headings “Restructuring Professional Fees” in the Approved Budget as then in effect.

“Actual Cash Receipts” shall mean with respect to any period, as the context requires, (x) the amount of actual receipts during such period of the Loan Parties (excluding any borrowings under this Agreement or the Amended Existing Credit Agreement) under the heading “Total Receipts” in the Approved Budget and/or (y) the sum, for such period, of all such receipts for all such line items which comprise “Total Receipts” (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.



“Actual Liquidity” shall mean as of any date of determination, as the context requires, for the Loan Parties, the actual amounts of U.S. Bank Cash, amounts available under the Amended Existing Credit Agreement, and the amount of any outstanding Withdrawal Notice.

“Actual Disbursement Amounts” shall mean with respect to any period, the sum, for such period, of all such disbursements for all such line items which comprise “Total Operating Disbursements / Payroll” and “Capex” (each as set forth in the Approved Budget), and all operational restructuring costs (*provided*, to the extent operational restructuring costs are included under the heading “Total Restructuring,” such costs shall be set forth as separate line items therein), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect, which amounts do not include Actual Borrower Professional Fees.

“Acquired EBITDA” means, with respect to any Pro Forma Entity for any period, the amount for such period of Consolidated EBITDA of such Pro Forma Entity (determined as if references to the Borrower and the Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the component financial definitions used therein) were references to such Pro Forma Entity and its Subsidiaries which will become Restricted Subsidiaries), all as determined on a consolidated basis for such Pro Forma Entity.

“Acquired Entity or Business” has the meaning given such term in the definition of “Consolidated EBITDA.”

“Acquisition Transaction” means the purchase or other acquisition, by merger, consolidation or otherwise, by the Borrower or any Restricted Subsidiary of Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person.

“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

“Adjustment Date” means the last day of each calendar month of March, June, September and December.

“Administrative Agent” means Wilmington Savings Fund Society, FSB, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Administrative Agent Fee Letter” means that certain fee letter, dated May 4, 2023, by and between the Administrative Agent and the Borrower.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified.

“Agent” means the Administrative Agent, the Collateral Agent, the Escrow Agent, and any successors and assigns in such capacity, and “Agents” means two or more of them.

“Agreement” has the meaning provided in the preamble hereto.



“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, respectively.

“Applicable Account” means, with respect to any payment to be made to the Administrative Agent hereunder, the account specified by the Administrative Agent from time to time for the purpose of receiving payments of such type.

“Applicable Rate” means, with respect to the Initial Term Loans, 5.00% for SOFR Loans and 4.00% for ABR Loans

“Approved Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“Approved Budget” means the initial Approved Budget and each Approved Budget delivered pursuant to Section 5.21. The initial Approved Budget is attached hereto as Exhibit S; provided, that the Borrower shall provide an updated budget in form and substance acceptable to the Required Lenders two (2) Business Days prior to any Withdrawal from the Loan Proceeds Account.

“Approved Budget Variance Report” shall mean a report provided by the Borrower to the Administrative Agent, for prompt further delivery to the Lenders, (a) showing, in each case, on a line item by line item and cumulative basis, the Actual Cash Receipts, the Actual Disbursement Amounts, actual U.S. Bank Cash, Actual Liquidity, and Actual Borrower Professional Fees as of the last day of the prior week, and the Variance Testing Period then most recently ended, noting therein (i) all variances, on a line item by line item basis and a cumulative basis, from the Budgeted Cash Receipts, the Budgeted Disbursement Amounts, the Budgeted Liquidity and the Budgeted Borrower Professional Fees for such period as set forth in the Approved Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance with such maximum variances set forth therein, and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intends to take with respect thereto, and (b) which such reports shall be certified by a Responsible Officer of the Borrower and shall be in a form, and shall contain supporting information, satisfactory to the Required Lenders in their sole discretion (it being acknowledged and agreed that the form of the variance report provided by the Borrower to the Lenders prior to the Effective Date, and as subsequently revised in accordance with good faith negotiations between the Lenders and the Borrower, shall be deemed satisfactory).

“Approved Electronic Communications” means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent and/or the Collateral Agent pursuant to any Loan Document or the transactions contemplated therein, including (a) any supplement, joinder or amendment to the Security Documents and any other written communication delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and any financial statements, financial and other report, notice, request, certificate and other information materials; *provided, however*, that solely with respect to delivery of any such Communication by any Loan Party to the Administrative Agent and without limiting or otherwise affecting either the Administrative Agent’s right to effect delivery of such Communication by posting such Communication to the Approved Electronic Platform or the protections afforded hereby to the Administrative Agent in connection with any such posting, “Approved Electronic



Communication” shall exclude (i) any notice of borrowing, letter of credit request, notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article IV or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

“Approved Electronic Platform” has the meaning assigned to such term in Section 9.01.

“Approved Foreign Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04), substantially in the form of Exhibit A-1 or any other form reasonably approved by the Administrative Agent.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.12(d).

“Backstop Fee” has the meaning set forth in Section 2.08(g)(i).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” shall mean Title 11 of the United State Code, as amended, or any similar federal or state law for the relief of debtors”

“Basel III” means, collectively, those certain agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring,” and “Guidance for National Authorities Operating the Countercyclical Capital Buffer,” each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and as implemented by a Lender’s primary banking regulatory authority.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current



Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (d) of Section 2.12.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points); or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to either the use or administration of Adjusted Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.12 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).



“Benchmark Replacement Date” means a date and time determined by the Administrative Agent (at the Direction of the Required Lenders), which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or



(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors of such Person, (c) in the case of any partnership, the board of directors or board of managers of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Board of Governors” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning provided in the preamble hereto and including any Successor Borrower.

“Borrowing” means Loans of the same Facility, Class and Type, made, converted or continued on the same date in the same currency and, in the case of SOFR Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means the lesser of \$1,000,000 and the remaining Commitments of the applicable Class.

“Borrowing Multiple” means \$1,000,000.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, in substantially the form of Exhibit B or another form which is acceptable to the Administrative Agent in its reasonable discretion.

“Budgeted Borrower Professional Fees” shall mean with respect to any period, the amount of restructuring and professional fees for such period that are set forth under the headings “Restructuring Professional Fees” in the Approved Budget, as then in effect.

“Budgeted Cash Receipts” means with respect to any period, as the context requires, (x) the line item under the heading “Forecast for Total Receipts” in the Approved Budget and/or (y) the sum, for such period, of all the amounts for all such line items which comprise “Total Receipts” (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.



“Budgeted Disbursement Amounts” means with respect to any period, as the context requires, (x) the amount that corresponds to the line items under the heading “Total Operating Disbursements / Payroll” and “Capex” (each as set forth in the Approved Budget) and all operational restructuring costs and/or (y) the sum, for such period, of all such line items which comprise “Total Operating Disbursements / Payroll” and “Capex” (each as set forth in the Approved Budget) and all operational restructuring costs, on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect, which amounts do not include Budgeted Borrower Professional Fees.

“Budgeted Liquidity” shall mean as of any date of determination, as the context requires, for the Loan Parties, the amount set forth as of such date as Actual Liquidity, in each case as determined by reference to the Approved Budget as then in effect.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that when used in connection with SOFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such SOFR Loans or any other dealings of such SOFR Loans, the term “Business Day” shall also exclude any day that is not a U.S. Government Securities Business Day.

“Canadian Dollars” and “C\$” mean the lawful currency of Canada.

“Capital Expenditures” means, for any period, the additions to property, plant and equipment and other capital expenditures of the Borrower and the Restricted Subsidiaries that are (or should be) set forth in a consolidated statement of cash flows of the Borrower for such period prepared in accordance with GAAP.

“Capital Lease Obligation” means an obligation that is a Capitalized Lease; and the amount of Indebtedness represented thereby at any time shall be the amount of the liability in respect thereof that would at that time be required to be capitalized on a balance sheet in accordance with GAAP as in effect on the Effective Date.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect on the Effective Date, recorded as capitalized leases.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“Cash Management Obligations” means (a) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Cash Management Services” has the meaning provided in the definition of the term “Secured Cash Management Obligations.”

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.



“Change of Control” means (a) the failure of Holdings prior to an IPO, or, after an IPO, the IPO Entity, to own directly or indirectly through wholly-owned Subsidiaries that are Guarantors, all of the Equity Interests in the Borrower, (b) prior to an IPO, the failure by the Permitted Holders to own, directly or indirectly through one or more holding company parents of Holdings, beneficially and of record, Equity Interests in Holdings representing at least a majority of the aggregate ordinary voting power for the election of the Board of Directors of Holdings represented by the issued and outstanding Equity Interests in Holdings, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings, (c) after an IPO, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 40% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the IPO Entity and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the IPO Entity held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one or more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings or the IPO Entity or (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the documentation governing the Amended Existing Credit Agreement or any other Material Indebtedness that is Subordinated Indebtedness. For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of Holdings, the IPO Entity or the Borrower, as applicable, directly or indirectly owned by the Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (c) of this definition is triggered).

“Change in Law” means (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (b) the making or issuance of any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided that*, notwithstanding anything herein to the contrary, (i) any requests, rules, guidelines or directives under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or issued in connection therewith and (ii) any requests, rules, guidelines or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case shall be deemed to be a “Change in Law,” regardless of when enacted, adopted, promulgated or issued.

“Chapter 11 Plan” shall mean a chapter 11 plan of reorganization for the Borrower and certain of its Affiliates in form and substance satisfactory to the Required Lenders (and, with respect to those provisions thereof that affect the rights, obligations, liabilities and duties of the Administrative Agent, to the Administrative Agent) in all respects and consented to by the Required Lenders, confirmed by an order (in form and substance satisfactory to the Required Lenders (and, with respect to those provisions thereof that affect the rights, obligations, liabilities and duties of the Administrative Agent, to the Administrative Agent)) of the Bankruptcy Court (which consent or satisfaction in each case of the Required Lenders may be communicated by means of a Direction of the Required Lenders), containing, among other things, (i) a release in favor of the Administrative Agent and the Lenders and their respective



Affiliates and their representatives, counsel and advisors, and (ii) provisions with respect to the settlement or discharge of all claims and other debts and liabilities, as such plan of reorganization may be modified, altered, amended or otherwise changed or supplemented with the prior written consent of the Required Lenders (which consent of the Required Lenders may be communicated by means of a Direction of the Required Lenders) (and, with respect to those provisions thereof that affect the rights, obligations, liabilities and duties of the Administrative Agent, the Administrative Agent).

“Class” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Loans under a specific Facility (including Initial Term Loans), (b) any Commitment, refers to whether such Commitment is a Commitment under a specific Facility (including the Term Commitment) and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

Any Term Loans that have different terms and conditions from shall be construed to be in different Classes.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Security Documents as security for the Secured Obligations.

“Collateral Agent” has the meaning assigned in the Collateral Agreement.

“Collateral Agreement” means the First Lien Collateral Agreement by and among each of the Loan Parties from time to time party thereto and the Collateral Agent, substantially in the form of Exhibit D.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

- (a) the Administrative Agent shall have received from (i) Holdings, each Intermediate Parent, the Borrower, each Domestic Subsidiary and each Foreign Guarantor (other than an Excluded Subsidiary) either (x) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guarantee Agreement, in the form specified therein, duly executed and delivered on behalf of such Person, (ii) Holdings, the Borrower and each Subsidiary Loan Party (other than the English Guarantors) either (x) a counterpart of the Collateral Agreement (or, with respect to each Foreign Guarantor, such other equivalent Security Document) duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Subsidiary Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Collateral Agreement (or, with respect to each Foreign Guarantor, such other equivalent Security Document), in the form specified therein (iii) (subject at all times to Section 5.14) the English Guarantors either (x) a counterpart of the Debenture Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes an English Guarantor after the Effective Date (including by ceasing to be an Excluded Subsidiary), a Security Accession Deed as defined in the Debenture Agreement and (iv) Holdings, the Borrower and each Subsidiary Loan Party Account Control Agreements with respect to each deposit account and securities account (in each case, other than any Excluded Account), duly executed and delivered on behalf of such Person, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, documents and, to the extent



reasonably requested by the Administrative Agent, opinions and certificates of the type referred to in Section 4.01(b) and 4.01(c));

- (b) all outstanding Equity Interests of each Intermediate Parent, the Borrower and the Restricted Subsidiaries (other than any Equity Interests constituting Excluded Assets or Equity Interests of Immaterial Subsidiaries) owned by or on behalf of any Loan Party shall have been pledged pursuant to the Collateral Agreement or charged pursuant to the Debenture Agreement (and the Administrative Agent shall have received certificates or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank);
- (c) if any Indebtedness for borrowed money of Holdings, any Intermediate Parent, the Borrower or any Subsidiary in a principal amount of \$2,000,000 or more individually is owing by such obligor to any Loan Party, such Indebtedness shall be evidenced by a promissory note, such promissory note shall have been pledged pursuant to the Collateral Agreement or the Debenture Agreement (as applicable) and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;
- (d) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements, required by the Security Documents, Requirements of Law and reasonably requested by the Administrative Agent to be filed, delivered, registered or recorded to create the Liens intended to be created by the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term "Collateral and Guarantee Requirement," shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording; and
- (e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record owner of such Mortgaged Property, (ii) with respect to each Mortgage, (w) a policy of title insurance (or marked unconditional commitment to issue such policy) in the amount equal to not less than 100% of the Fair Market Value of the Mortgaged Property covered thereby, including fixtures, as reasonably determined by the Borrower and agreed to by the Administrative Agent, issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements (other than a creditor's rights endorsement), coinsurance and reinsurance as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates, (x) such affidavits, instruments of indemnification (including a so-called "gap" indemnification) as are customarily requested by the title company to induce the title company to issue the title policies and endorsements contemplated above, (y) evidence reasonably acceptable to the Collateral Agent of payment by the Borrower (or evidence that the same will be paid out of Loan proceeds) of all title policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the title policies referred to above, (iii) a survey of such Mortgaged Property in such form as shall be required by the title company to issue the so-called comprehensive and other survey-related endorsements and to remove the standard survey exceptions from the title policies and endorsements contemplated above (*provided, however*, that a survey shall not be required to the extent that the issuer of the applicable title insurance policy provides reasonable and customary survey-related coverages (including, without limitation, survey-related endorsements) in the applicable title insurance policy based on an existing survey and/or such other documentation as may be reasonably



satisfactory to the title insurer), (iv) a completed “life of loan” FEMA flood determination and notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each applicable Loan Party, (v) if the improvements located on such Mortgaged Property is located in an area determined by FEMA to have special flood hazards, evidence of such flood insurance as may be required under applicable law, including Regulation H of the Board of Governors and the other Flood Insurance Laws and as required under Section 5.07, and (vi) a customary legal opinion from appropriate counsel practicing in the jurisdiction in which the real property covered by such Mortgage is located.

- (f) Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (i) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if, and for so long as and to the extent that the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree in writing that the cost of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any material adverse Tax consequences (including the imposition of withholding or other material Taxes)), shall be excessive in view of the benefits to be obtained by the Lenders therefrom (or the relevant assets or actions shall be limited in a manner reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower in order to reduce such cost), (ii) Liens required to be granted from time to time pursuant to the term “Collateral and Guarantee Requirement” shall be subject to exceptions and limitations set forth in the Security Documents as in effect on the Effective Date, (iii) other than set forth in Section 5.19, in no event shall control agreements or other control or similar arrangements be required with respect to deposit accounts, securities accounts, commodities accounts or other assets specifically requiring perfection by control agreements, (iv) no perfection actions shall be required with respect to Vehicles and other assets subject to certificates of title (other than the filing of UCC financing statements), (v) no perfection actions shall be required with respect to commercial tort claims with a value less than \$1,000,000 individually (other than the filing of UCC financing statements), and no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$1,000,000 individually (other than the filing of UCC financing statements), (vi) except with respect to any Foreign Guarantors, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required to be taken to create any security interests in assets located or titled outside of the United States or to perfect or make enforceable any security interests in any such assets and (vii) except with respect to any Foreign Guarantors, no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements). The Administrative Agent (acting at the Direction of the Required Lenders) may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date).

“Commitment” means with respect to any Lender, its Term Commitment of any Class or any combination thereof (as the context requires).

“Commitment Fee” has the meaning set forth in Section 2.08(g)(iii).

“Commitment Schedule” means Schedule 2.01.



“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company Materials” has the meaning specified in Section 5.01.

“Compliance Certificate” means each certificate required to be delivered pursuant to Section 5.01(d) in the form of Exhibit G-2 (or such other form reasonably acceptable to the Administrative Agent).

“Consolidated EBITDA” means, for any period, the Consolidated Net Income for such period, plus:

- (a) without duplication and to the extent already deducted (and not added back) in arriving at such Consolidated Net Income, the sum of the following amounts for such period:
  - (i) total interest expense and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or such derivative instruments, and bank and letter of credit fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of “Consolidated Interest Expense” pursuant to clauses (i) through (xi) thereof,
  - (ii) provision for taxes based on income, profits, revenue or capital gains, including federal, foreign and state income, franchise, excise, value added and similar taxes and foreign withholding taxes paid or accrued during such period (including in respect of repatriated funds) including penalties and interest related to such taxes or arising from any tax examinations,
  - (iii) depreciation and amortization (including amortization of Capitalized Software Expenditures, internal labor costs and deferred financing fees or costs),
  - (iv) other non-cash charges (other than any accrual in respect of bonuses) (*provided*, in each case, that if any non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period),
  - (v) the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Subsidiary deducted (and not added back in such period to Consolidated Net Income) excluding cash distributions in respect thereof,
  - (vi) (A) the amount of management, monitoring, consulting and advisory fees, indemnities and related expenses paid or accrued in such period to (or on behalf of) the Sponsor (including any termination fees payable in connection with the early termination of management and monitoring agreements) to the extent otherwise permitted under Section 6.09(x) and (B) the amount of payments made to option holders of the Borrower or any of its direct or indirect parent companies in connection with, or as a result of, any distribution being made to shareholders of such person or its direct or indirect parent companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted in the Loan Documents,



(vii) losses or discounts on sales of receivables and related assets in connection with any Permitted Receivables Financing,

(viii) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not included in the calculation of Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (c) below for any previous period and not added back,

(ix) any costs or expenses incurred by the Borrower or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of the Borrower or Net Cash Proceeds of an issuance of Equity Interests of the Borrower (other than Disqualified Equity Interests), and

(x) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 715, and any other items of a similar nature,

plus

- (b) without duplication, the amount of “run rate” cost savings, operating expense reductions and synergies related to the Transactions or any other Specified Transaction, any restructuring, cost saving initiative or other initiative projected by the Borrower in good faith to be realized as a result of actions that have been taken or initiated or are expected to be taken (in the good faith determination of the Borrower), including any cost savings, expenses and charges (including restructuring and integration charges) in connection with, or incurred by or on behalf of, any joint venture of the Borrower or any of the Restricted Subsidiaries (whether accounted for on the financial statements of any such joint venture or the Borrower) (i) with respect to the Transactions, on or prior to the date that is 24 months after the Effective Date (including actions initiated prior to the Effective Date) and (ii) with respect to any other Specified Transaction, any restructuring, cost saving initiative or other initiative, within 24 months after such Specified Transaction, restructuring, cost saving initiative or other initiative (which cost savings shall be added to Consolidated EBITDA until fully realized and calculated on a Pro Forma Basis as though such cost savings had been realized on the first day of the relevant period), net of the amount of actual benefits realized from such actions; *provided* that (A) such cost savings are reasonably identifiable and factually supportable, (B) no cost savings, operating expense reductions or synergies shall be added pursuant to this clause (b) to the extent duplicative of any expenses or charges relating to such cost savings, operating expense reductions or synergies that are included in clause (a) above (it being understood and agreed that “run rate” shall mean the full recurring benefit that is associated with any action taken) and (C) the share of any such cost savings, expenses and charges with respect to a joint venture that are to be allocated to the Borrower or any of the Restricted Subsidiaries shall not exceed the total amount thereof for any such joint venture multiplied by the percentage of income of such venture expected to be included in Consolidated EBITDA for the relevant Test Period;

minus



- (c) without duplication and to the extent included in arriving at such Consolidated Net Income, the sum of the following amounts for such period:
- (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period), and
  - (ii) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly-owned subsidiary added (and not deducted in such period from Consolidated Net Income),

in each case, as determined on a consolidated basis for the Borrower and the Restricted Subsidiaries in accordance with GAAP; *provided that*,

(I) there shall be included in determining Consolidated EBITDA for any period, without duplication, the Acquired EBITDA of any Person, property, business or asset acquired by the Borrower or any Restricted Subsidiary during such period whether such acquisition occurred before or after the Effective Date to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired) (each such Person, property, business or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Effective Date, and not subsequently so disposed of, an “Acquired Entity or Business”), in each case based on the Acquired EBITDA of such Pro Forma Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis, and

(II) there shall be (A) excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of, closed or classified as discontinued operations by the Borrower or any Restricted Subsidiary during such period (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of) (each such Person, property, business or asset so sold, transferred or otherwise disposed of, closed or classified, a “Sold Entity or Business”), in each case based on the Disposed EBITDA of such Sold Entity or Business for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis and (B) included in determining Consolidated EBITDA for any period in which a Sold Entity or Business is disposed, an adjustment equal to the Pro Forma Disposal Adjustment with respect to such Sold Entity or Business (including the portion thereof occurring prior to such disposal) as specified in the Pro Forma Disposal Adjustment certificate delivered to the Administrative Agent (for further delivery to the Lenders).

“Consolidated First Lien Debt” means the sum, without duplication, of the amount of Consolidated Total Debt (a) under the Loans, (b) that is secured by liens on the Collateral on an equal or senior priority basis (but without regard to the control of remedies) with Liens securing the Secured Obligations or (c) that constitutes secured Capital Lease Obligations of the Borrower or any Restricted Subsidiary. For the avoidance of doubt, Consolidated First Lien Debt shall be reduced, without duplication, by the amount of cash and Permitted Investments reducing Consolidated Total Debt as of the relevant date of determination.



“Consolidated Interest Expense” means the sum of (a) cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and the Restricted Subsidiaries with respect to all outstanding Indebtedness of the Borrower and the Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under hedging agreements plus (b) non-cash interest expense resulting solely from the amortization of original issue discount from the issuance of Indebtedness of the Borrower and the Restricted Subsidiaries (excluding Indebtedness borrowed hereunder in connection with the Transactions) at less than par, plus (c) pay-in-kind interest expense of the Borrower and the Restricted Subsidiaries, but excluding, for the avoidance of doubt, (i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clause (b) above (including as a result of the effects of acquisition method accounting or pushdown accounting), (ii) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging, (iii) any one-time cash costs associated with breakage in respect of hedging agreements for interest rates, (iv) commissions, discounts, yield, make whole premium and other fees and charges (including any interest expense) incurred in connection with any Permitted Receivables Financing, (v) any “additional interest” owing pursuant to a registration rights agreement with respect to any securities, (vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including, without limitation, any Indebtedness issued in connection with the Transactions, (vii) penalties and interest relating to taxes, (viii) accretion or accrual of discounted liabilities not constituting Indebtedness, (ix) interest expense attributable to a direct or indirect parent entity resulting from push-down accounting, (x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting and (xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto and with respect to any Permitted Acquisition or similar Investment permitted hereunder, all as calculated on a consolidated basis in accordance with GAAP.

For purposes of this definition, interest on a Capitalized Lease shall be deemed to accrue at an interest rate reasonably determined by the Borrower to be the rate of interest implicit in such Capitalized Lease in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income (loss) of the Borrower and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication:

- (a) extraordinary, non-recurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses (including any unusual or non-recurring operating expenses directly attributable to the implementation of cost savings initiatives and any accruals or reserves in respect of any extraordinary, non-recurring or unusual items), severance, relocation costs, integration and facilities’ opening costs and other business optimization expenses (including related to new product introductions and other strategic or cost savings initiatives), restructuring charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves), whether or not classified as restructuring expense on the consolidated financial statements, signing costs, retention or completion bonuses, other executive recruiting and retention costs, transition costs, costs related to closure/consolidation of facilities and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments),



- (b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income,
- (c) Transaction Costs,
- (d) [reserved],
- (e) any fees and expenses (including any transaction or retention bonus or similar payment) incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, asset disposition, issuance or repayment of debt, issuance of equity securities, refinancing transaction or amendment or other modification of any debt instrument (in each case, including any such transaction consummated prior to the Effective Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with FASB Accounting Standards Codification 805 and gains or losses associated with FASB Accounting Standards Codification 460),
- (f) any income (loss) for such period attributable to the early extinguishment of Indebtedness, hedging agreements or other derivative instruments,
- (g) accruals and reserves that are established or adjusted as a result of the Transactions in accordance with GAAP (including any adjustment of estimated payouts on existing earn-outs) or changes as a result of the adoption or modification of accounting policies during such period,
- (h) all Non-Cash Compensation Expenses,
- (i) any income (loss) attributable to deferred compensation plans or trusts,
- (j) any income (loss) from investments recorded using the equity method of accounting (but including any cash dividends or distributions actually received by the Borrower or any Restricted Subsidiary in respect of such investment),
- (k) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business) or income (loss) from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of), in each case, together with any related provisions for taxes on any such gain (or the tax effect of any such loss);
- (l) any non-cash gain (loss) attributable to the mark-to-market movement in the valuation of hedging obligations or other derivative instruments pursuant to FASB Accounting Standards Codification 815 Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification 825 Financial Instruments; *provided* that any cash payments or receipts relating to transactions realized in a given period shall be taken into account in such period,
- (m) any non-cash gain (loss) related to currency remeasurements of Indebtedness (including the net loss or gain resulting from hedging agreements for currency exchange risk and revaluations of intercompany balances),



- (n) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures (*provided*, in each case, that the cash payment in respect thereof in such future period shall be subtracted from Consolidated Net Income for the period in which such cash payment was made), and
- (o) any impairment charge or asset write-off or write-down (including related to intangible assets (including goodwill), long-lived assets, and investments in debt and equity securities).

There shall be excluded from Consolidated Net Income for any period the effects from applying acquisition method accounting, including applying acquisition method accounting to inventory, property and equipment, loans and leases, software and other intangible assets and deferred revenue (including deferred costs related thereto and deferred rent) required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrower and the Restricted Subsidiaries), as a result of the Transactions, any acquisition consummated prior to the Effective Date and any Permitted Acquisitions or other Investment or the amortization or write-off of any amounts thereof.

In addition, to the extent not already included in Consolidated Net Income, Consolidated Net Income shall include the amount of proceeds received or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer or indemnifying party and only to the extent that such amount is in fact reimbursed within 365 days of the date of the insurable or indemnifiable event (net of any amount so added back in any prior period to the extent not so reimbursed within the applicable 365-day period), due from business interruption insurance or reimbursement of expenses and charges that are covered by indemnification and other reimbursement provisions in connection with any acquisition or other similar Investment or any disposition of any asset permitted hereunder.]

“Consolidated Secured Debt” means Consolidated Total Debt that is secured by a Lien on the Collateral and all secured Capital Lease Obligations of the Borrower or any Restricted Subsidiary. For the avoidance of doubt, Consolidated Secured Debt shall be reduced, without duplication, by the amount of cash and Permitted Investments reducing Consolidated Total Debt as of the relevant date of determination.

“Consolidated Total Assets” means, as at any date of determination, the amount that would be set forth opposite the caption “total assets” (or any like caption) on the most recent consolidated balance sheet of the Borrower and the Restricted Subsidiaries in accordance with GAAP.

“Consolidated Total Debt” means, as of any date of determination (i) the outstanding principal amount of all third party Indebtedness for borrowed money (including purchase money Indebtedness), unreimbursed drawings under letters of credit, Capital Lease Obligations, third party Indebtedness obligations evidenced by notes or similar instruments, and, without duplication, Receivables Guarantees, in each case of the Borrower and the Restricted Subsidiaries on such date, on a consolidated basis and determined in accordance with GAAP (excluding, in any event, the effects of any discounting of Indebtedness resulting from the application of acquisition method accounting in connection with the Transactions or any Permitted Acquisition or other Investment) minus (ii) the aggregate amount of cash and Permitted Investments on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date to the extent the use thereof for the application to the payment of Indebtedness is not prohibited by law or any contract to which the Borrower and any Restricted Subsidiary is a party. It is understood that to the extent the Borrower or any Restricted Subsidiary incurs any Indebtedness and receives the proceeds of such Indebtedness, for purposes of determining any incurrence test under this



Agreement and whether the Borrower is in Pro Forma Compliance with any such test, the proceeds of such incurrence shall not be “netted” pursuant to clause (ii) of this definition.

“Consolidated Working Capital” means, at any date, the excess of (a) the sum of all amounts (other than cash and Permitted Investments) that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such date, excluding the current portion of current and deferred income taxes over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans and obligations under letters of credit to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income taxes; *provided* that, for purposes of calculating Excess Cash Flow, increases or decreases in working capital (A) arising from acquisitions or dispositions by the Borrower and the Restricted Subsidiaries shall be measured from the date on which such acquisition or disposition occurred until the first anniversary of such acquisition or disposition with respect to the Person subject to such acquisition or disposition and (B) shall exclude (I) the impact of non-cash adjustments contemplated in the Excess Cash Flow calculation, (II) the impact of adjusting items in the definition of “Consolidated Net Income” and (III) any changes in current assets or current liabilities as a result of (x) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under hedging agreements or other derivative obligations, (y) any reclassification, other than as a result of the passage of time, in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (z) the effects of acquisition method accounting.

“Contract Consideration” has the meaning given such term in the definition of “Excess Cash Flow.”

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise.

“Controlling” and “Controlled” have meanings correlative thereto.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“CRO” has the meaning assigned to such term in Section 5.23(a).

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Debenture Agreement” means the Debenture Agreement by and among the English Guarantors and the Collateral Agent.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.



“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Term Loans within one Business Day of the date on which such funding is required hereunder, (b) notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement or provided any written notification to any Person to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent (whether acting on its own behalf or at the reasonable request of the Borrower (it being understood that the Administrative Agent shall comply with any such reasonable request)), to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, unless the subject of a good faith dispute or subsequently cured, or (e)(i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding or any action or proceeding of the type described in Section 7.01(h) or (i), or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) has become the subject of a Bail-In Action.

“DIP Credit Agreement” has the meaning assigned to such term in Section 2.01(c).

“Direction of the Required Lenders” means a written direction or instruction from Lenders constituting the Required Lenders which may be in the form of an email or other form of written communication and which may come from any Specified Lender Advisor. Any such email or other communication from a Specified Lender Advisor shall be conclusively presumed to have been authorized by a written direction or instruction from the Required Lenders and such Specified Lender Advisor shall be conclusively presumed to have acted on behalf of and at the written direction or instruction from the Required Lenders (and the Agents shall be entitled to rely on such presumption). For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory,” “acceptable,” “reasonably satisfactory” or “reasonably acceptable” (or any expression of similar import) to the Required Lenders, such determination may be communicated by a Direction of the Required Lenders as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the Required Lenders, such consent, approval or determination may be communicated by a Direction of the Required Lenders as contemplated above. The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any purported Direction of the Required Lenders, and the Agents shall not have any responsibility to independently determine whether such direction has in fact been authorized by the Required Lenders.

“Disposed EBITDA” means, with respect to any Sold Entity or Business for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business (determined as if references to the Borrower and the Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the component financial definitions used therein) were references to such Sold Entity or Business and its subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business.

“Disposition” has the meaning assigned to such term in Section 6.05.



“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

- (a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or
- (c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date 91 days after the Latest Maturity Date; *provided, however*, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale,” a “change of control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after repayment in full of all the Loans and all other Loan Document Obligations that are accrued and payable and the termination of the Commitments and (ii) if an Equity Interest in any Person is issued pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), any Intermediate Parent, the Borrower or any of the Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by Holdings (or any direct or indirect parent company thereof), the Borrower or any of the Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person.

“Disqualified Lenders” means (a) those Persons identified by a Sponsor or Holdings to the Specified Lender Advisors in writing prior to the Effective Date, (b) those Persons who are competitors of the Borrower and its Subsidiaries identified by a Sponsor or Holdings to the Administrative Agent from time to time in writing (including by email) and (c) in the case of each Persons identified pursuant to clauses (a) and (b) above, any of their Affiliates that are either (i) identified in writing by Holdings or a Sponsor from time to time or (ii) clearly identifiable as Affiliates on the basis of such Affiliate’s name (other than, in the case of this clause (c), Affiliates that are bona fide debt funds); *provided*, that no designation of any Person as a Disqualified Lender shall retroactively disqualify any assignments or participations made to, or information provided to, such Person before it was designated as a Disqualified Lender, and such Person shall not be deemed to be a Disqualified Lender in respect of any assignments or participations made to such Person prior to the date of such designation.

“Dollar Amount” means, at any time with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding (or in which such participation is held).

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.



“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“ECF Percentage” means 50% of Excess Cash Flow for such fiscal year.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Effective Date Direct Borrowing” means \$36,000,000 representing the portion of the total Borrowing amount to be made on the Effective Date that shall be funded pursuant to the Flow of Funds on the Effective Date (rather than being deposited into the Loan Proceeds Account).

“Effective Date Intercreditor Agreement” means the Intercreditor Agreement, dated as of the date hereof, by and between the Administrative Agent and the Existing Administrative Agent, and acknowledged by the Loan Parties, substantially in the form of Exhibit E.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person, other than, in each case, (i) a natural person, (ii) a Defaulting Lender, (iii) a Disqualified Lender to the extent a list of Disqualified Lenders has been made available to all Lenders or (iv) the Holdings, the Borrower or any of their respective Subsidiaries and Affiliates.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“English Guarantors” means any Subsidiary that is incorporated under the laws of England and Wales.

“Environmental Laws” means applicable common law and all applicable treaties, rules, regulations, codes, ordinances, judgments, orders, decrees and other applicable Requirements of Law, and all applicable injunctions or binding agreements issued, promulgated or entered into by or with any Governmental Authority, in each instance relating to the protection of the environment, including with respect to the preservation or reclamation of natural resources or the Release or threatened Release of any Hazardous Material, or to the extent relating to exposure to Hazardous Materials, the protection of human health or safety.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities), of Holdings, any Intermediate Parent, the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or



permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 or Section 430 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by a Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan (including any liability under Section 4062(e) of ERISA) or Multiemployer Plan; or (h) the receipt by a Loan Party or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, “insolvent” within the meaning of Section 4245 of ERISA or in “endangered” or “critical status”, within the meaning of Section 432 of the Code or Section 305 of ERISA.

“Escrow Agent” means the Escrow Agent under the Escrow Agreement, which shall initially be The Bank of New York Mellon, a New York banking corporation.

“Escrow Agreement” means the Escrow Agreement, dated as of the Effective Date (as amended, restated, supplemented or otherwise modified from time to time), among the Borrower, the Escrow Agent and the Administrative Agent for and on behalf of the Lenders relating to the Loan Proceeds Account.

“Escrow Termination Date” shall have the meaning assigned to such term in Section 2.10(g).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“euro” means the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the EMU Legislation.

“Event of Default” has the meaning assigned to such term in Section 7.01.



“Excess Cash Flow” means, for any period, an amount equal to the excess of:

(a) sum, without duplication, of:

- (i) Consolidated Net Income for such period,
- (ii) an amount equal to the amount of all non-cash charges to the extent deducted in arriving at such Consolidated Net Income (*provided*, in each case, that if any non-cash charge represents an accrual or reserve for cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Excess Cash Flow in such future period),
- (iii) decreases in Consolidated Working Capital, long-term receivables and long-term prepaid assets and increases in long-term deferred revenue for such period,
- (iv) an amount equal to the aggregate net non-cash loss on dispositions by the Borrower and the Restricted Subsidiaries during such period (other than dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income, and
- (v) extraordinary, non-recurring or unusual gains;

over:

(b) the sum, without duplication, of:

- (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (including any amounts included in Consolidated Net Income pursuant to the next to last sentence of the definition of “Consolidated Net Income” to the extent such amounts are due but not received during such period) and cash charges included in clauses (a) through (p) of the definition of “Consolidated Net Income” (other than cash charges in respect of Transaction Costs paid on or about the Effective Date to the extent financed with the proceeds of Indebtedness incurred on the Effective Date or an equity investment on the Effective Date),
- (ii) without duplication of amounts deducted pursuant to clause (x) below in prior fiscal years, the amount of Capital Expenditures made in cash or accrued during such period, to the extent that such Capital Expenditures were financed with internally generated cash flow of the Borrower or the Restricted Subsidiaries,
- (iii) (x) the aggregate amount of all principal payments of Indebtedness, including (A) the principal component of payments in respect of Capitalized Leases and (B) the amount of any mandatory prepayment of Loans to the extent required due to a Disposition that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase but excluding (x) all other prepayments of Loans and (y) all prepayments of revolving loans and swingline loans made during such period (other than in respect of any revolving credit facility to the extent there is an equivalent permanent reduction in commitments thereunder), except to the extent financed with the proceeds of other third-party Indebtedness of the Borrower or the Restricted Subsidiaries and (y) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are required to be made in connection with any prepayment of Indebtedness,



(iv) an amount equal to the aggregate net non-cash gain on Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital and long-term receivables, long-term prepaid assets and decreases in long-term deferred revenue for such period,

(vi) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income, except to the extent financed with the proceeds of long-term third-party Indebtedness of the Borrower or the Restricted Subsidiaries,

(vii) without duplication of amounts deducted pursuant to clause (x) below in prior fiscal years, the amount of Investments (other than Investments in Permitted Investments) and acquisitions not prohibited by this Agreement, except to the extent that such Investments and acquisitions were financed with the proceeds of long-term third-party Indebtedness of the Borrower or the Restricted Subsidiaries,

(viii) the amount of dividends and distributions paid in cash during such period not prohibited by this Agreement, to the extent that such dividends and distributions were financed with internally generated cash flow of the Borrower or the Restricted Subsidiaries,

(ix) the aggregate amount of expenditures actually made by the Borrower and the Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income, to the extent that such expenditure was financed with internally generated cash flow of the Borrower or the Restricted Subsidiaries,

(x) without duplication of amounts deducted from Excess Cash Flow in prior periods, (1) the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts, commitments, letters of intent or purchase orders (the "Contract Consideration"), in each case, entered into prior to or during such period and (2) to the extent set forth in a certificate of a Financial Officer delivered to the Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Test Period is required to be delivered pursuant to Section 5.01(a) or 5.01(b), the aggregate amount of cash that is reasonably expected to be paid in respect of planned cash expenditures by the Borrower or any of the Restricted Subsidiaries (the "Planned Expenditures"), in the case of each of clauses (1) and (2), relating to Permitted Acquisitions, other Investments (other than Investments in Permitted Investments) or Capital Expenditures (including Capitalized Software Expenditures or other purchases of intellectual property) to be consummated or made during a subsequent Test Period (and in the case of Planned Expenditures, the subsequent Test Period); *provided*, that to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Acquisitions, Investments or Capital Expenditures during such subsequent Test Period is less than the Contract Consideration and Planned Expenditures, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such subsequent Test Period,

(xi) the amount of taxes (including penalties and interest) paid in cash and/or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period, and



(xii) extraordinary, non-recurring or unusual losses.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended from time to time.

“Excluded Accounts” means deposit accounts or securities accounts (a) established (or otherwise maintained) by the Loan Parties that do not have cash balances for five (5) consecutive Business Days exceeding \$500,000 individually and \$1,000,000 in the aggregate for all deposit accounts and securities accounts excluded pursuant to this clause (a), (b) the funds in which consist of (i) funds held by the Borrower or any Subsidiary in trust for any director, officer or employee of the Borrower or any Subsidiary or any employee benefit plan maintained by the Borrower or any Subsidiary or (ii) funds representing deferred compensation for the directors and employees of the Borrower and the Subsidiaries, (c) used by the Loan Parties exclusively for disbursements and payments (including payroll) in the ordinary course of business, (d) that are zero balance accounts, (e) that are located outside of the United States (other than the United Kingdom and Canada) and (f) that are used exclusively for any Permitted Receivables Financing.

“Excluded Assets” means (a) [Intentionally Omitted], (b) any interest in real property (other than Material Real Property), (c) any governmental licenses or state or local franchises, charters or authorizations, to the extent a security interest in any such license, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction, but excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code of any applicable jurisdiction), (d) any asset if, to the extent that and for so long as the grant of a Lien thereon to secure the Secured Obligations is prohibited by any Requirements of Law (other than to the extent that any such prohibition would be rendered ineffective pursuant to any other applicable Requirements of Law) or would require consent or approval of any Governmental Authority (including any legally effective requirement to obtain the consent of any governmental authority), but excluding any prohibition or restriction that is ineffective under the Uniform Commercial Code of any applicable jurisdiction, (e) margin stock, (f) to the extent prohibited by, or creating an enforceable right of termination in favor of any other party thereto under (other than any Loan Party) the terms of any applicable Organizational Documents, joint venture agreement or shareholders’ agreement, Equity Interests in any Person other than wholly-owned Restricted Subsidiaries in existence prior to the Effective Date (so long as, in respect of any such contractual prohibition, such prohibition is not incurred in contemplation of this Agreement), (g) assets to the extent a security interest in such assets would result in material adverse Tax consequences to the Borrower, its Subsidiaries or their Affiliates as reasonably agreed by the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders), (h) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent (if any) that, and solely during the period (if any) in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law, (i) any lease, license or other agreement or any property subject thereto (including pursuant to a purchase money security interest or similar arrangement) to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money arrangement or create a breach, default or right of termination in favor of any other party thereto (other than any Loan Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code of any applicable jurisdiction or other similar applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code of any applicable jurisdiction or other similar applicable law notwithstanding such prohibition, (j) [reserved], (k) receivables and related assets (or interests therein) (A) sold to any Receivables Subsidiary or (B) otherwise pledged, factored, transferred or sold in connection with any Permitted Receivables Financing, (l) commercial tort claims with a value of less than \$1,000,000, individually, and letter-of-credit rights with a value of less than \$1,000,000, individually (except to the



extent a security interest therein can be perfected by a UCC filing), (m) Vehicles and other assets subject to certificates of title (except to the extent a security interest therein can be perfected by a UCC filing), (n) any aircraft, airframes, aircraft engines or helicopters, or any Equipment or other assets constituting a part thereof (except to the extent a security interest therein can be perfected by a UCC filing), (o) Excluded Accounts (other than pursuant to clauses (a) and (e) of the definition thereof), (p) in relation to any non-U.S. Loan Party, any assets of, held by or relating to, such non-U.S. Loan Party, defined or described as “excluded assets” in any Security Document to the extent the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree and (q) any other asset to the extent the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree that the cost, burden, difficulty or other consequences (including any material adverse Tax consequences) of obtaining a security interest in such asset or perfection thereof is excessive in relation to the benefit to the Lenders of the security to be afforded thereby (the relevant assets shall be limited in a manner reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower in order to reduce such cost, burden, difficulty or other consequences)).

“Excluded Subsidiary” means (a) [reserved], (b) each Subsidiary listed on Schedule 1.01(a), (c) [reserved], (d) [reserved], (e) any Subsidiary that is prohibited by (i) applicable Requirements of Law or (ii) any contractual obligation existing on the Effective Date or on the date any such Subsidiary is acquired (so long in respect of any such contractual prohibition such prohibition is not incurred in contemplation of such acquisition), in each case from guaranteeing the Secured Obligations (but only for so long as such restriction is continuing) or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee, or for which the provision of a Guarantee would result in a material adverse Tax consequence (including as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction) to the Borrower, its Subsidiaries or their Affiliates as reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower), (f) any Foreign Subsidiary (other than any Foreign Guarantors), (g) any FSHCO (other than any Foreign Guarantors), (h) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary or FSHCO (other than any Foreign Guarantors), (i) any other Subsidiary excused from becoming a Loan Party pursuant to clause (f)(i) of the definition of the term “Collateral and Guarantee Requirement,” (j) each Receivables Subsidiary, (k) any not-for-profit Subsidiaries, captive insurance companies or other special purpose subsidiaries designated by the Borrower from time to time, (l) any Subsidiary established for the purpose of consummating a Permitted Acquisition or other acquisition permitted hereunder to the extent that such Subsidiary does not hold material assets during such period and (k) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders), the cost, burden, difficulty or other consequences (including any materially adverse Tax consequences) of providing a guarantee of the Secured Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom.

“Excluded Swap Obligation” means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to any applicable keep well, support, or other agreement for the benefit of such Guarantor and any and all Guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Guarantor as specified in any



agreement between the relevant Loan Parties and counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a Master Agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) net income or profits (however denominated), branch profits Taxes, and franchise Taxes, in each case imposed by (i) a jurisdiction as a result of such recipient being organized or having its principal office located in or, in the case of any Lender, having its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) any jurisdiction as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than a connection arising solely from such recipient having executed, delivered, or become a party to, performed its obligations or received payments under, received or perfected a security interest under, sold or assigned an interest in, engaged in any other transaction pursuant to, or enforced, any Loan or Loan Document), (b) any withholding Tax that is attributable to a Lender’s failure to comply with Section 2.15(e), (c) any U.S. federal withholding Taxes imposed due to a Requirement of Law in effect at the time (i) a Lender becomes a party hereto (other than pursuant to an assignment request by the Borrower under Section 2.17) or (ii) a Lender designates a new lending office, except in each case to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding Tax under Section 2.15(a) and (d) any Tax imposed pursuant to FATCA.

“Existing Credit Agreement” means that certain Credit Agreement entered into as of May 1, 2017, among Initial Holdings, the Borrower, Citibank, N.A., as administrative agent (in such capacity, the “Existing Administrative Agent”), collateral agent and L/C issuer, and each lender from time to time party thereto (as the same may be amended, amended and restated, modified, refinanced and/or restated prior to the date hereof and as further amended by that certain Amendment No. 8, dated as of the hereof, among Initial Holdings, the Borrower, the Initial Holdings, the Borrower, and the lenders party thereto, the “Amendment to Existing Credit Agreement” and the Existing Credit Agreement as amended by the Amendment to Existing Credit Agreement, the “the Amended Existing Credit Agreement”).

“Facility” means the facility comprised of the Initial Term Loans.

“Fair Market Value” means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset.

“Fair Value” means the amount at which the assets (both tangible and intangible), in their entirety, of Holdings and its Subsidiaries taken as a whole would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

“FATCA” means Sections 1471 through 1474 of the Code as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code and any law, regulation, rule,



promulgation or official agreement implementing an official governmental agreement or intergovernmental agreement with respect to the foregoing.

“FCPA” has the meaning assigned to such term in Section 3.18(b).

“Federal Funds Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States.

“FEMA” means the U.S. Federal Emergency Management Agency.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“First Lien Intercreditor Agreement” means an Intercreditor Agreement, substantially in the form of Exhibit F, among the Collateral Agent and the Senior Representatives for one or more classes of obligations to be secured *pari passu* relative to the Liens on the Collateral securing the Secured Obligations, with such modifications thereto as the Administrative Agent and the Borrower shall reasonably agree.

“First Lien Leverage Ratio” means, on any date, the ratio of (a) Consolidated First Lien Debt as of such date to (b) Consolidated EBITDA for the Test Period as of such date.

“First Testing Period” means the period commencing three weeks prior to, and ending on, the Friday of the first calendar week ending after the Effective Date, which is May 5, 2023 (which shall include three weeks of Actual Cash Receipts or Actual Disbursement Amounts, as applicable, prior to the Effective Date plus one week of receipts or disbursements, as applicable, following the Effective Date).

“Floor” means a rate of interest equal to 1.00% *per annum*.

“Flow of Funds” means a flow of funds statement relating to payments to be made and credited by all of the parties on the Effective Date (including wire instructions therefor) as prepared by the Borrower and its financial advisor in consultation with (and approved by) the Administrative Agent and the Required Lenders.

“Foreign Guarantors” means (i) the English Guarantors and (ii) any Subsidiary that is organized under the laws of Canada (or any province thereof).

“Foreign Intellectual Property” means any right, title or interest in or to any copyrights, copyright licenses, patents, patent applications, patent licenses, trade secrets, trade secret licenses, trademarks, service marks, trademark and service mark applications, trade names, trade dress, trademark licenses, technology, know-how and processes or any other intellectual property governed by or arising or existing under, pursuant to or by virtue of the laws of any jurisdiction other than the United States of America or any state thereof.



“Foreign Pension Plan” shall mean any employee benefit plan sponsored, maintained or contributed to by any Loan Party or any of its Subsidiaries or Foreign Subsidiaries that, under Requirements of Law (other than the laws of the United States or any political subdivision thereof) is required to be funded through a trust or other funding vehicle, other than a trust or other funding vehicle maintained exclusively by a Governmental Authority.

“Foreign Plan Event” shall mean, (i) the receipt of notice of intent by a Governmental Authority to terminate or to appoint a trustee or similar official to administer a Foreign Pension Plan or alleging the insolvency of a Foreign Pension Plan, (ii) the incurrence of liability by any Loan Party or any of its Subsidiaries or Foreign Subsidiaries under applicable law on account of the complete or partial termination of a Foreign Pension Plan, (iii) the occurrence of any transaction with respect a Foreign Pension Plan that is prohibited under any applicable law or (iv) the imposition on any Loan Party or any of its Subsidiaries or Foreign Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any law applicable to a Foreign Pension Plan.

“Foreign Prepayment Event” has the meaning assigned to such term in Section 2.09(f).

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“FSHCO” means any direct or indirect Domestic Subsidiary of Holdings (other than the Borrower) that has no material assets other than Equity Interests (or Equity Interests and Indebtedness) in one or more Foreign Subsidiaries (other than any Foreign Guarantors) or other FSHCOs.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of the Borrower or the Restricted Subsidiaries, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of the Borrower or any subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of “Capital Lease Obligations.”



“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, Governmental Authorities.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning assigned to such term in Section 9.04(e). “Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined in good faith by a Financial Officer. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee Agreement” means the First Lien Guarantee Agreement by and among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit C.

“Guarantors” means, collectively, (i) with respect to the Secured Obligations of the Borrower, each of Holdings, the Intermediate Parents and the Subsidiary Loan Parties and (ii) with respect to the Secured Obligations of any of Holdings, the Intermediate Parents and the Subsidiary Loan Parties, the Borrower.

“Hazardous Materials” means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated as hazardous or toxic, or any other term of similar import, pursuant to any Environmental Law.

“Historical Financial Statements” means the audited consolidated balance sheet and audited consolidated statements of operations, comprehensive income (loss), changes in shareholders’ equity and cash flows of Cyxtera Technologies, Inc. as of the end of and for such fiscal year, and related notes thereto.

“Holdings” means (a) prior to any IPO, Initial Holdings and (b) on and after an IPO, (i) if the IPO Entity is Initial Holdings or any Person of which Initial Holdings is a subsidiary, Initial Holdings or (ii) if the IPO Entity is a subsidiary of Initial Holdings that is an Intermediate Parent, the IPO Entity.



“IFRS” means international accounting standards as promulgated by the International Accounting Standards Board.

“Immaterial Subsidiary” means any Subsidiary that is not a Material Subsidiary.

“Immediate Family Members” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Impacted Loans” has the meaning assigned to such term in Section 2.12(a)(ii).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred and unpaid purchase price of property or services (excluding trade accounts payable in the ordinary course of business and any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid within 60 days after being due and payable), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others (other than by endorsement of negotiable instruments for collection in the ordinary course of business), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances; *provided* that the term “Indebtedness” shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Parent Entity appearing on the balance sheet of the Borrower solely by reason of push down accounting under GAAP, (v) accrued expenses and royalties and (vi) asset retirement obligations and obligations in respect of reclamation and workers’ compensation (including pensions and retiree medical care) that are not overdue by more than 60 days. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business.

“Indemnified Taxes” means all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.



“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 9.12(a).

“Initial Holdings” has the meaning assigned to such term in the preamble hereto.

“Initial Term Commitment” means, with respect to each Term Lender, the commitment of such Term Lender to make an Initial Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Initial Term Loan to be made by such Term Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to an Assignment and Assumption. The initial amount of each Term Lender’s Initial Term Commitment is set forth on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Term Lender shall have assumed its Initial Term Commitment, as the case may be. As of the Effective Date, the total Initial Term Commitment is \$50,000,000.

“Initial Term Facility” means the facility comprised of the Initial Term Commitment and the Initial Term Loans.

“Initial Term Loans” means Loans made pursuant to Section 2.01(b).

“Intellectual Property” has the meaning assigned to such term in the Collateral Agreement.

“Intercreditor Agreements” means the Effective Date Intercreditor Agreement, any First Lien Intercreditor Agreement or any other intercreditor agreement contemplated by this Agreement.

“Interest Coverage Ratio” means, as of any date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense, in each case for the Test Period as of such date.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.05.

“Interest Payment Date” means, subject to Section 2.10(c), (a) with respect to any ABR Loan, the last day of each calendar month of March, June, September and December and (b) with respect to any SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a SOFR Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (or, if agreed to by each Lender participating therein, twelve months or such other period less than twelve months or such other period less than one month, in each case as the Borrower may elect), *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) that in the event the Borrower elects an Interest Period of less than one month, the interest rate in respect of the applicable SOFR Borrowing shall be determined through the use of straight-



line interpolation by reference to two such rates, one of which shall be determined as if the length of the period of such deposits were the period of time for which the rate for such deposits are available is the period next shorter than the length of such Interest Period and the other of which shall be determined as if the period of time for which the rate for such deposits are available is the period next longer than the length of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Intermediate Parent” means any subsidiary of Holdings of which the Borrower is a subsidiary.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or Indebtedness or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other Indebtedness or equity participation or interest in, another Person including any partnership or joint venture interest in such other Person, (excluding, in the case of the Borrower and the Restricted Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. The amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof, as determined in good faith by a Financial Officer, (iii) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the Fair Market Value of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (iv) any Investment (other than any Investment referred to in clause (i), (ii) or (iii) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (A) the cost of all additions thereto and minus (B) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (B) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; *provided* that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.



“Investor” means a holder of Equity Interests in Holdings (or any direct or indirect parent thereof) on the Effective Date.

“IPO” means the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common Equity Interests in the IPO Entity.

“IPO Entity” means, at any time at and after an IPO, Initial Holdings, a parent entity of Initial Holdings, or an Intermediate Parent, as the case may be, the Equity Interests in which were issued or otherwise sold pursuant to the IPO; *provided* that, immediately following the IPO, the Borrower is a wholly-owned subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to the IPO.

“IRS” means the United States Internal Revenue Service.

“Junior Financing” means any Material Indebtedness (other than any permitted intercompany Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary) that is (a) subordinated in right of payment to the Loan Document Obligations, (b) secured on a junior basis to the Liens securing the Secured Obligations or (c) unsecured.

“KPI Report” has the meaning specified in Section 5.21(a).

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Term Loan or Term Commitment hereunder at such time, including the latest maturity or expiration date of the Initial Term Loans, or Other Term Loan, in each case as extended in accordance with this Agreement from time to time.

“Lenders” means (a) the Term Lenders and (b) any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, in each case other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Liabilities” means the recorded liabilities (including contingent liabilities that would be recorded in accordance with GAAP) of the Borrower and its Subsidiaries taken as a whole, as of the Effective Date after giving effect to the consummation of the Transactions, determined in accordance with GAAP consistently applied.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan Document Obligations” means (a) the due and punctual payment by the Borrower of (i) the principal of and interest at the applicable rate or rates provided in this Agreement (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar



proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual payment and performance of all other obligations of the Borrower under or pursuant to each of the Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents (including interest and monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“Loan Documents” means this Agreement, the Administrative Agent Fee Letter, the Escrow Agreement, the Guarantee Agreement, the Collateral Agreement, the UK Security Agreements, the Intercreditor Agreements, the other Security Documents and, except for purposes of Section 9.02, any promissory notes delivered pursuant to Section 2.07(f).

“Loan Parties” means Holdings, each Intermediate Parent, the Borrower and the Subsidiary Loan Parties.

“Loan Proceeds Account” shall mean an escrow account with the Escrow Agent into which the proceeds of the Loans (other than the Effective Date Direct Borrowing) shall be deposited and retained subject to withdrawal thereof by the Borrower (each such event, a “Withdrawal”) pursuant to a Withdrawal Notice for use in accordance with the terms hereof and of the Approved Budget or return thereof to the Lenders upon the occurrence of the Maturity Date for any reason whatsoever.

“Loans” means the Term Loans.

“Management Investors” means the directors and officers and employees of Holdings, any Intermediate Parents, the Borrower and/or any of their respective subsidiaries who are (directly or indirectly through one or more investment vehicles) Investors.

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement.”

“Material Adverse Effect” means any event, circumstance or condition that has had, or could reasonably be expected to have, a material and adverse effect on (a) the business or financial condition of the Borrower and the Restricted Subsidiaries, taken as a whole, (b) the ability of the Borrower and the Guarantors, taken as a whole, to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loan Document Obligations), or obligations in respect of one or more Swap Agreements, of any one or more of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries in an aggregate principal amount exceeding \$10,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings, the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Intellectual Property” means any patents, trademarks, copyrights, and all other intellectual property that, individually or in the aggregate, are material to the operation of the business of the Borrower and its Subsidiaries, taken as a whole.

“Material Intellectual Property Provision” means, notwithstanding anything else in this Agreement or the other Loan Documents to the contrary (a) no Investment or Disposition of Material Intellectual Property may be made from Holdings, the Borrower or any Loan Party, in each case, to any



Subsidiary that is not a Loan Party and (b) no Subsidiary that is not a Loan Party may hold any Material Intellectual Property at any time, including property that was Material Intellectual Property at the time of acquisition by such Subsidiary or becomes Material Intellectual Property thereafter.

“Material Real Property” means any fee-owned real property with a book value greater than \$2,000,000 as determined on the Effective Date (for existing fee-owned real property) or, with respect to after-acquired fee-owned real property, on the date of acquisition thereof or of the Person that owns such fee-owned real property.

“Material Subsidiary” means (a) each wholly-owned Restricted Subsidiary that, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 1.0% of the consolidated revenues or total assets, as applicable, of the Borrower for such quarter or that is designated by the Borrower as a Material Subsidiary and (b) any group comprising wholly-owned Restricted Subsidiaries that each would not have been a Material Subsidiary under clause (a) but that, taken together, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 2.5% of the consolidated revenues or total assets, as applicable, of the Borrower for such quarter; *provided* that solely for purposes of Sections 7.01(h) and 7.01(i) each such Restricted Subsidiary forming part of such group is subject to an Event of Default under one or more of such Sections.

“Maturity Date” means the earliest of (a) May 1, 2024, (b) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (c) the effective date of a Chapter 11 Plan for the Loan Parties, and (d) the date of consummation of a sale of all or substantially all of any Loan Party’s assets under Section 363 of the Bankruptcy Code.

“Maximum Rate” has the meaning assigned to such term in Section 9.18.

“Milestones” means the Milestones set forth in Section 5.20.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage” means a mortgage, deed of trust, assignment of leases and rents or other security document granting a Lien on any Mortgaged Property to secure the Secured Obligations, *provided, however*, in the event any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes or similar fees, the applicable Mortgage shall not secure an amount in excess of 100% of the Fair Market Value of such Mortgaged Property. Each Mortgage shall be substantially in the form of Exhibit Q with such modifications as may be required by, or customary to account for, local law matters.

“Mortgaged Property” means Material Real Property with respect to which a Mortgage is granted pursuant to Section 4.01(f) (if any), 5.11, 5.12 or 5.14.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate is then making contributions, or accruing an obligation to make contributions, or has within the last six plan years made contributions, including, for these purposes, any Person which ceased to be an ERISA Affiliate during such six year period.

“Net Proceeds” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds, including any cash payments received by way of deferred payment of



principal pursuant to a note or installment receivable or purchase price adjustment or earn-out (but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by Holdings, the Borrower and the Restricted Subsidiaries in connection with such event (including attorney's fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a Disposition of an asset (including pursuant to a Sale Leaseback or Casualty Event or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by Holdings, the Borrower and the Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by Holdings, the Borrower or the Restricted Subsidiaries and (iii) the amount of all Taxes paid (or reasonably estimated to be payable), and the amount of any reserves established by Holdings, the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, *provided* that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.

"Non-Cash Compensation Expense" means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(c).

"OFAC" has the meaning assigned to such term in Section 3.18(d).

"Organizational Documents" means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future recording, stamp, court or documentary, intangible, filing or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, except any such Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17(b)).

"Parent Entity" means any Person that is a direct or indirect parent of the Borrower.

"Participant" has the meaning assigned to such term in Section 9.04(c)(i).



“Participant Register” has the meaning assigned to such term in Section 9.04(c)(iii).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means an Acquisition Transaction; *provided* that (a) in the case of any purchase or other acquisition of Equity Interests in a Person, (i) such Person, upon the consummation of such purchase or acquisition, will be a Subsidiary Loan Party (including as a result of a merger or consolidation between any Subsidiary and such Person), or (ii) such Person is merged into or consolidated with a Subsidiary Loan Party and such Subsidiary Loan Party is the surviving entity of such merger or consolidation, (b) the business of such Person, or such assets, as the case may be, constitute a business permitted by Section 5.16, (c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to any such newly created or acquired Subsidiary (including each subsidiary thereof) or assets in order to satisfy the requirements set forth in clauses (a), (b), (c) and (d) of the definition of the term “Collateral and Guarantee Requirement” to the extent applicable shall have been taken, (d) and in the case of any purchase or other acquisition of assets of a Person, upon the consummation of such purchase or acquisition, the assets will be owned by a Subsidiary Loan Party, (e) after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing.

“Permitted Receivables Financing” means, collectively, the receivables securitizations or other receivables financing (including any factoring program) in effect as of the Effective Date pursuant to that certain Receivables Purchase Agreement, dated as of August 31, 2022, by and among, *inter alia*, Cyxtera Receivables Holdings, LLC, a Delaware limited liability company, PNC Bank, National Association as administrative agent, Cyxtera communications, LLC, a Missouri limited liability company, in its individual capacity and as initial servicer, PNC Capital Markets LLC, a Pennsylvania limited liability company, as structuring agent (without giving effect to any amendments or modifications thereto entered on or after the Effective Date, other than those approved by a Direction of the Required Lenders), in an aggregate amount not to exceed \$37,500,000 that are non-recourse to Holdings and the Restricted Subsidiaries (except for (i) any customary limited recourse or recourse limited Subsidiaries that are not Loan Parties, (y) any performance undertaking or Guarantee and (z) an unsecured parent Guarantee (a “Receivables Guarantee”) by Holdings, Intermediate Holdings or a Restricted Subsidiary that is a parent company of a Restricted Subsidiary of obligations of Restricted Subsidiaries, and, in each case, reasonable extensions thereof); *provided* that with respect to Permitted Receivables Financings incurred in the form of a factoring program, the outstanding amount of such Permitted Receivables Financing for the purposes of this definition shall be deemed to be equal to the Permitted Receivables Net Investment for the last Test Period.

“Permitted Receivables Net Investment” means the aggregate cash amount paid by the purchasers under any Permitted Receivables Financing in the form of a factoring program in connection with their purchase of accounts receivable and customary related assets or interests therein, as the same may be reduced from time to time by collections with respect to such accounts receivable and related assets or otherwise in accordance with the terms of such Permitted Receivables Financing (but excluding any such collections used to make payments of commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Receivables Financing in the form of a factoring program which are payable to any Person other than the Borrower or a Restricted Subsidiary).

“Perfection Certificate” shall have the meaning assigned to such term in the Collateral Agreement.”



“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR.”

“Permitted Encumbrances” means:

- (a) Liens for taxes or other governmental charges that are not overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (b) Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or construction contractors’ Liens and other similar Liens arising in the ordinary course of business that secure amounts not overdue for a period of more than 30 days or, if more than 30 days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers’ compensation, unemployment insurance and other social security legislation and (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i);
- (d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, bankers’ acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, incurred in the ordinary course of business or consistent with past practices;
- (e) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole;
- (f) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 7.01(j);
- (g) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Borrower or any of its Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments, *provided* that such Lien secures only the obligations of the Borrower or such subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01;
- (h) rights of set-off, banker’s lien, netting agreements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management



arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments; and

- (i) Liens arising from precautionary Uniform Commercial Code financing statements or any similar filings made in respect of operating leases entered into by the Borrower or any of its subsidiaries.

“Permitted Holder” means (a) the Sponsor; (b) Longview Asset Management LLC, (c) the Management Investors and their Immediate Family Members; and (d) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the date hereof) of which the Persons described in clauses (a), (b) and/or (c) are members; *provided* that the Persons described in clauses (a), (b) and/or (c) beneficially own a majority of the Equity Interests beneficially owned by such group.

“Permitted Investments” means any of the following, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars, euro, Sterling, Canadian Dollars, Singapore dollars, yuan or such other currencies held by it from time to time in the ordinary course of business;
- (b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States or (ii) any member nation of the European Union rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, having average maturities of not more than 24 months from the date of acquisition thereof; *provided* that the full faith and credit of the United States or such member nation of the European Union is pledged in support thereof;
- (c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least (x) \$250,000,000 in the case of U.S. banks and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks (any such bank meeting the requirements of clause or (ii) above being an “Approved Bank”), in each case with average maturities of not more than 12 months from the date of acquisition thereof;
- (d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 24 months from the date of acquisition thereof;
- (e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of (x) \$250,000,000 in the case of U.S. banks and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks, in each case, for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States or (ii) any member nation of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody’s, in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a Fair Market Value of at least 100% of the amount of the repurchase obligations;



- (f) marketable short-term money market and similar highly liquid funds either (i) having assets in excess of (x) \$250,000,000 in the case of U.S. banks or other U.S. financial institutions and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks or other non-U.S. financial institutions or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);
- (g) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, or by any political subdivision or taxing authority of any such state, commonwealth or territory having an investment grade rating from either S&P or Moody's (or the equivalent thereof);
- (h) investments with average maturities of 12 months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;
- (i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euro or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction;
- (j) investments, classified in accordance with GAAP as current assets, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;
- (k) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, *provided* such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, *provided* such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than 24 months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank; and
- (l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (a) (i) with respect to any such Indebtedness constituting Capital Lease Obligations, the assets subject to such Capitalized Lease shall be substantially the same as the Indebtedness so modified, refinanced, refunded, renewed or extended and (ii) with respect to all Indebtedness other than such constituting Capital Lease Obligations, the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or



accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing revolving commitments unutilized thereunder to the extent that the portion of any existing and unutilized revolving commitment being refinanced was permitted to be drawn under Sections 6.01 and 6.02 of this Agreement immediately prior to such refinancing (other than by reference to a Permitted Refinancing) and such drawing shall be deemed to have been made, (b) other than with respect to a Permitted Refinancing in respect of Capital Lease Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Loan Document Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (d) immediately after giving effect thereto, no Event of Default shall have occurred and be continuing, and (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is permitted pursuant to Section 6.01(a)(ii), 6.01(a)(xxi), or 6.01(a)(xxii), (i) the terms and conditions (excluding as to subordination, interest rate (including whether such interest is payable in cash or in kind), rate floors, fees, discounts and premiums) of Indebtedness resulting from such modification, refinancing, refunding, renewal or extension (including as to collateral (including in respect of the priority of the Liens on such collateral)) are, taken as a whole, are not materially more favorable to the investors providing such Indebtedness than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended (except for covenants or other provisions applicable to periods after the Latest Maturity Date at the time such Indebtedness is incurred) (it being understood that, to the extent that any financial maintenance covenant is added for the benefit of any such Permitted Refinancing, the terms shall not be considered materially more favorable if such financial maintenance covenant is either (A) also added for the benefit of any corresponding Loans remaining outstanding after the issuance or incurrence of such Permitted Refinancing or (B) only applicable after the Latest Maturity Date at the time of such refinancing); *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to such modification, refinancing, refunding, renewal or extension, together with a reasonably detailed description of the material terms and conditions of such resulting Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement, shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (ii) the primary obligor in respect of, and/or the Persons (if any) that Guarantee, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension are the primary obligor in respect of, and/or Persons (if any) that Guaranteed the Indebtedness being modified, refinanced, refunded, renewed or extended. For the avoidance of doubt, it is understood that a Permitted Refinancing may constitute a portion of an issuance of Indebtedness in excess of the amount of such Permitted Refinancing; *provided* that such excess amount is otherwise permitted to be incurred under Section 6.01. For the avoidance of doubt, it is understood and agreed that a Permitted Refinancing includes successive Permitted Refinancings of the same Indebtedness.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.



“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and (i) in respect of which a Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA or (ii) has at any time within the preceding six years been maintained, sponsored or contributed to by any Loan Party or any ERISA Affiliate.

“Planned Expenditures” has the meaning assigned to such term in the definition of “Excess Cash Flow.”

“Platform” has the meaning specified in Section 5.01.

“Post-Transaction Period” means, with respect to any Specified Transaction, the period beginning on the date on which such Specified Transaction is consummated and ending on the last day of the eighth full consecutive fiscal quarter of the Borrower immediately following the date on which such Specified Transaction is consummated.

“Prepayment Event” means:

- (a) any sale, transfer or other Disposition of any property or asset of Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries pursuant to Section 6.05(j), Section 6.05(k), Section 6.05(m) and Section 6.05(n); or
- (b) the incurrence by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 or permitted by the Required Lenders pursuant to Section 9.02 (or other requisite Lenders as specified in Section 9.02).

“Present Fair Saleable Value” means the amount that could be obtained by an independent willing seller from an independent willing buyer if the assets of Holdings and its Subsidiaries taken as a whole are sold with reasonable promptness in an arm’s-length transaction under present conditions for the sale of comparable business enterprises insofar as such conditions can be reasonably evaluated.

“Primary Syndication” means, if the Required Lenders shall elect to do so in their sole discretion, the primary syndication of the Loans and the assignments of the Loans in connection with the offering of the right to participate in the Loans that shall be made available to all “Lenders” under the Amended Existing Credit Agreement.

“Primary Syndication Procedures” means the procedures to effect the Primary Syndication that will be in form and substance acceptable to the Required Lenders.

“Pro Forma Adjustment” means, for any Test Period, any adjustment to Consolidated EBITDA made in accordance with clause (b) of the definition of that term.

“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” means, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a Pro Forma Basis, that (a) to the extent applicable, the Pro Forma Adjustment shall have been made and (b) all Specified Transactions and the following transactions in connection therewith that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made shall be deemed to have occurred as of the first day of the applicable period of measurement in such test, financial ratio or covenant: (i) income statement items (whether positive or negative) attributable to the property or Person subject to such



Specified Transaction, (A) in the case of a Disposition of all or substantially all Equity Interests in any subsidiary of Holdings or any division, product line, or facility used for operations of Holdings, any Intermediate Parents, the Borrower or any of the Restricted Subsidiaries, shall be excluded, and (B) in the case of a Permitted Acquisition or Investment described in the definition of “Specified Transaction,” shall be included, (ii) any retirement of Indebtedness, and (iii) any Indebtedness incurred or assumed by Holdings, the Borrower or any of the Restricted Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination; *provided* that, without limiting the application of the Pro Forma Adjustment pursuant to clause (a) above, the foregoing pro forma adjustments may be applied to any such test, financial ratio or covenant solely to the extent that such adjustments are consistent with the definition of “Consolidated EBITDA” (and subject to the limitations set forth in clause (b) thereof) and give effect to events (including cost savings, operating expense reductions and synergies) that are (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on Holdings, the Borrower and any of the Restricted Subsidiaries and (z) factually supportable or (ii) otherwise consistent with the definition of “Pro Forma Adjustment.”

“Pro Forma Disposal Adjustment” means, for any four-quarter period that includes all or a portion of a fiscal quarter included in any Post-Transaction Period with respect to any Sold Entity or Business, the pro forma increase or decrease in Consolidated EBITDA projected by the Borrower in good faith as a result of contractual arrangements between the Borrower or any Restricted Subsidiary entered into with such Sold Entity or Business at the time of its disposal or within the Post-Transaction Period and which represent an increase or decrease in Consolidated EBITDA which is incremental to the Disposed EBITDA of such Sold Entity or Business for the most recent four-quarter period prior to its disposal.

“Pro Forma Entity” means any Acquired Entity or Business.

“Proposed Change” has the meaning assigned to such term in Section 9.02(c).

“PSF” has the meaning assigned to such term in Section 5.22.

“Public Lender” has the meaning specified in Section 5.01.

“Purchasing Borrower Party” means Holdings or any subsidiary of Holdings.

“Qualified Equity Interests” means Equity Interests in Holdings or any parent of Holdings other than Disqualified Equity Interests.

“Receivables Guarantee” has the meaning assigned to such term in the definition of “Permitted Receivables Financing.”

“Receivables Subsidiary” means any Special Purpose Entity established in connection with a Permitted Receivables Financing.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933, substantially identical notes (having substantially the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.



“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the partners, directors, officers, employees, trustees, agents, controlling persons, advisors and other representatives of such Person and of each of such Person’s Affiliates and permitted successors and assigns.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) and including the environment within any building or other structure.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Removal Effective Date” has the meaning assigned to such term in Article VIII.

“Required Lenders” means, at any time, Lenders having Term Loans and unused Commitments representing more than 50% of the aggregate Dollar Amount of Term Loans; *provided* that whenever there are one or more Defaulting Lenders or Disqualified Lenders, the total Dollar Amount of outstanding Loans and unused Commitments of each Defaulting Lender and each Disqualified Lender shall, in each case, be excluded for purposes of making a determination of Required Lenders.

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Resignation Effective Date” has the meaning assigned to such term in Article VIII.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, or other similar officer, manager or a director of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a) of the definition of the term “Collateral and Guarantee Requirement,” any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Debt Payments” has the meaning set forth in Section 6.08(b).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests.

“Restricted Subsidiary” means any Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.09(d).



“Rolling Four Week Testing Period” mean each cumulative period of four weeks ending on the Friday of each of the calendar weeks, respectively.

“RSA” means the Restructuring Support Agreement dated as of May 4, 2023 (as may be amended, restated, supplemented or otherwise modified from time to time), including, the exhibits, annexes and schedules thereto.

“RSA Termination Event” shall mean an event described in Section 12 of the RSA, which with the taking of applicable action thereunder would result in the termination of the RSA.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any other Restricted Subsidiary (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed of.

“Sanctions” means economic sanctions administered or enforced by the United States Government (including without limitation, sanctions enforced by OFAC), the United Nations Security Council, the European Union or Her Majesty’s Treasury.

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Obligations” means the due and punctual payment and performance of all obligations of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds (collectively, “Cash Management Services”) provided to Holdings, the Borrower or any Subsidiary (whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) that are (a) owed to the Administrative Agent or any of its Affiliates, (b) owed on the Effective Date to a Person that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) owed to a Person that is an Agent, a Lender or an Affiliate of an Agent or Lender at the time such obligations are incurred.

“Secured Leverage Ratio” means, on any date, the ratio of (a) Consolidated Secured Debt as of such date to (b) Consolidated EBITDA for the Test Period as of such date.

“Secured Obligations” means (a) the Loan Document Obligations, (b) the Secured Cash Management Obligations and (c) the Secured Swap Obligations (excluding with respect to any Loan Party, Excluded Swap Obligations of such Loan Party).

“Secured Parties” means (a) each Lender, (b) the Administrative Agent and Collateral Agent, (c) [reserved], (d) each Person to whom any Secured Cash Management Obligations are owed, (e) each counterparty to any Swap Agreement the obligations under which constitute Secured Swap Obligations and (f) the permitted successors and assigns of each of the foregoing.



“Secured Swap Obligations” means the due and punctual payment and performance of all obligations of Holdings, any Intermediate Parents, the Borrower, and the Restricted Subsidiaries under each Swap Agreement that (a) is with a counterparty that is the Administrative Agent or any of its Affiliates, (b) is in effect on the Effective Date with a counterparty that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) is entered into after the Effective Date with any counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent at the time such Swap Agreement is entered into.

“Security Documents” means the Collateral Agreement, the Mortgages, all Account Control Agreements, the UK Security Agreements and each other security agreement or pledge agreement executed and delivered pursuant to the Collateral and Guarantee Requirement, Section 4.01, 5.11, 5.12 or 5.14, or any other Loan Document to secure any of the Secured Obligations.

“Senior Representative” means, with respect to any series of applicable Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Sold Entity or Business” has the meaning given such term in the definition of “Consolidated EBITDA.”

“SOFR Borrowing” means a Borrowing of a SOFR Loan.

“SOFR Loan” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “ABR”.

“Special Purpose Entity” means a direct or indirect subsidiary of Holdings, whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve its separateness from Holdings and/or one or more Subsidiaries of Holdings.

“Specified Lender Advisors” shall mean (x) Gibson, Dunn & Crutcher LLP, as legal counsel, and (y) Houlihan Lokey Capital, Inc, as financial advisor.

“Specified Real Estate Assets” means the real property located at 22995 Wilder Ct., Sterling, VA 20166, 9180 Commerce Center Circle, Highlands Ranch, CO 80129 and 9110 Commerce Center Circle, Highlands Ranch, CO 80129.

“Specified Transaction” means, with respect to any period, any Investment, Disposition, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation or other event that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a “Pro Forma Basis.”



“Sponsor” means each of (a) BC Partners, Inc. and its Affiliates (including the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby, and any investors in such funds (including committed investors in BC European Capital X, L.P.), partnerships or other co-investments vehicles as of the Effective Date, but other than, in each case, Holdings and its Subsidiaries or any portfolio company, and (b) Medina Capital Advisors, LLC and its Affiliates (including the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby but other than, in each case, Holdings and its Subsidiaries or any portfolio company).

“Spot Rate” means on any day with respect to any currency other than Dollars, the rate at which such currency may be exchanged into Dollars (at the bid price), as set forth at approximately 11:00 a.m., London time, on such day as determined by OANDA Corporation (and available at <http://www.oanda.com/>) for such currency; in the event that such rate is not determined by OANDA Corporation, the Spot Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower, or, in the absence of such agreement, such Spot Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., New York City time, on such date for the purchase of Dollars for delivery two Business Days later.

“SPV” has the meaning assigned to such term in Section 9.04(e).

“Subordinated Indebtedness” means any Junior Financing under clause (a) of the definition thereof.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Loan Party” means each Subsidiary that is a party to the Guarantee Agreement.

“Successor Borrower” has the meaning assigned to such term in Section 6.03(a)(iv).

“Successor Holdings” has the meaning assigned to such term in Section 6.03(a)(v).

“Swap” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap



transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Person, any obligation to pay or perform under any Swap.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Commitment” means, with respect to each Term Lender, its Initial Term Commitment.

“Term Lenders” means initially the Persons listed on Schedule 2.01(b) and as of any date of determination from and after the Effective Date, any other Person that shall have become a party hereto pursuant to an Assignment and Assumption in respect of any Term Loans, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Term Loans” means the Initial Term Loans.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; *provided*, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR



Determination Day; *provided, further*, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Term SOFR Adjustment” means, for any calculation with respect to an ABR Loan or a SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

ABR Loans: 0.11448%

SOFR Loans:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.11448%
Three months	0.26161%
Six months	0.42826%

“Term SOFR Determination Day” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Test Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ending on or prior to such date for which financial statements have been (or were required to have been) delivered pursuant to Section 5.01(a) or Section 5.01(b); *provided* that prior to the first date financial statements have been delivered pursuant to Section 5.01(a) or Section 5.01(b), the Test Period in effect shall be the period of four consecutive fiscal quarters of the Borrower ended December 31, 2022.

“Total Leverage Ratio” means, on any date, the ratio of (a) Consolidated Total Debt as of such date to (b) Consolidated EBITDA for the Test Period as of such date.

“Transactions” means, collectively, (a) the negotiation, execution and delivery by each Loan Party of the Loan Documents to which it is to be a party and the borrowing and the funding of the Initial Term Loans on the Effective Date and (b) the payment of the fees and expenses incurred in connection with any of the foregoing (including the Transaction Costs).

“Transaction Costs” means any fees, costs or expenses incurred or paid by the Sponsor, any Parent Entity, Initial Holdings, the Borrower or any Subsidiary in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.



“Type,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Term SOFR Rate or the Alternate Base Rate.

“UCC” or “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Pledged Collateral (as defined in the Collateral Agreement) is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UK Collateral Documents” means the (i) UK Security Agreements, (ii) security accession deeds governed by the laws of England and Wales and (iii) any Security Document governed by the laws of England and Wales.

“UK Security Agreements” means the English law governed all asset Debenture Agreement.

“UK Subsidiary” means any existing or future direct or indirect subsidiary of the Borrower that is incorporated under the laws of England and Wales.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“U.S. Bank Cash” means cash of the Borrower and its Subsidiaries deposited in commercial banks located in the United States and Permitted Investments of the Borrower and its Subsidiaries, as currently reported in the Approved Budget and in a manner consistent with past practices (excluding amounts held for customers pursuant to the terms of the agreements with such customers and which are excluded from the Approved Budget and related reporting).

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Variance Testing Period” shall mean, as applicable, each of (a) the First Testing Period and (b) each Rolling Four Week Testing Period ending on the Friday of each calendar week ending thereafter, commencing with the Rolling Four Week Testing Period ending on May 12, 2023.

“Vehicles” means all railcars, cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state and all tires and other appurtenances to any of the foregoing.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.



“wholly-owned subsidiary” means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law) are, as of such date, owned, controlled or held by such Person or one or more wholly-owned subsidiaries of such Person or by such Person and one or more wholly-owned subsidiaries of such Person.

“Withdrawn Amount” shall have the meaning set forth in Section 2.01(b)(ii).

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withdrawal Notice” means a notice substantially in the form attached hereto as Exhibit R to be delivered by the Borrower to the Escrow Agent and the Administrative Agent from time to time to request a Withdrawal from the Loan Proceeds Account.

“Withholding Agent” shall mean any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02     Classification of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Class (e.g., a “Term Loan”) or by Type (e.g., a “SOFR Loan”) or by Class and Type (e.g., a “SOFR Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Borrowing”) or by Type (e.g., a “SOFR Borrowing”) or by Class and Type (e.g., a “SOFR Term Borrowing”).

SECTION 1.03     Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any agreement (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04     Accounting Terms; GAAP.



(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Agreement, the Total Leverage Ratio, the First Lien Leverage Ratio, the Secured Leverage Ratio and the Interest Coverage Ratio shall be calculated on a Pro Forma Basis to give effect to all Specified Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made.

(c) Where reference is made to “the Borrower and the Restricted Subsidiaries on a consolidated basis” or similar language, such consolidation shall not include any Subsidiaries of the Borrower other than the Restricted Subsidiaries.

(d) In the event that the Borrower elects to prepare its financial statements in accordance with IFRS and such election results in a change in the method of calculation of financial covenants, standards or terms (collectively, the “Accounting Changes”) in this Agreement, the Borrower and the Administrative Agent agree to enter into good faith negotiations in order to amend such provisions of this Agreement (including the levels applicable herein to any computation of the Total Leverage Ratio, the First Lien Leverage Ratio, the Secured Leverage Ratio and the Interest Coverage Ratio) so as to reflect equitably the Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be substantially the same after such change as if such change had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed in accordance with GAAP (as determined in good faith by a Responsible Officer of the Borrower) (it being agreed that the reconciliation between GAAP and IFRS used in such determination shall be made available to Lenders) as if such change had not occurred.

SECTION 1.05 Effectuation of Transactions. All references herein to Holdings, the Borrower and their subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of Holdings, any Intermediate Parents, the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Effective Date, unless the context otherwise requires.

SECTION 1.06 Currency Translation; Rates.

(a) For purposes of any determination under Article V, Article VI or Article VII or any determination under any other provision of this Agreement, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at the Spot Rate (rounded to the nearest currency unit, with 0.5 or more of a currency unit being rounded upward); *provided, however*, that for purposes of determining compliance with Article VI with respect to the amount of any Indebtedness, Investment, Disposition, Restricted Payment or Restricted Debt Payment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred or Disposition, Restricted Payment or Restricted Debt Payment is made; *provided further*, that, for the avoidance of doubt, the foregoing provisions of this Section 1.06 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred or Disposition, Restricted Payment or Restricted Debt Payment made at any time under such Sections. For



purposes of any determination of Consolidated Total Debt, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered financial statements pursuant to Section 5.01(a) or Section 5.01(b). Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower's consent (such consent not to be unreasonably withheld) to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

(b) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Term SOFR Rate" or with respect to any comparable or successor rate thereto, except as expressly provided herein.

SECTION 1.07 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.08 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

## ARTICLE II THE CREDITS

SECTION 2.01 Commitments.

(a) [Reserved].



(b) Subject to the terms and conditions set forth herein, each Term Lender agrees to make a Term Loan denominated in Dollars to the Borrower on the Effective Date in a principal amount not exceeding its Term Commitment. Amounts repaid or prepaid in respect of Loans may not be reborrowed. Upon a Lender's funding of an Initial Term Loan on the Effective Date, such Lender's Initial Term Loan Commitment shall be permanently reduced to zero and shall terminate as of the Effective Date.

(c) Notwithstanding anything to the contrary, upon the occurrence of any Involuntary Bankruptcy Action or Other Bankruptcy Action, the parties hereto agree that all Obligations under this Credit Agreement, including any Loans the proceeds of which remain in the Loan Proceeds Account, shall be converted into and exchanged for loans under a senior secured superpriority debtor-in- possession term loan credit facility, which shall be in form and substance acceptable to the Required Lenders, including, without limitation, with respect to quantum, structure and any roll-up of loans under the Amended Existing Credit Agreement (the "DIP Credit Agreement") to the extent the Required Lenders so elect in their sole discretion.

#### SECTION 2.02 Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Facility, Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Facility and Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, *provided* that the Commitments of the Lenders are several and, other than as expressly provided herein with respect to a Defaulting Lender, no Lender shall be responsible for any other Lender's failure to make Loans as required hereby.

(b) Subject to Section 2.12, each Borrowing shall be comprised entirely of ABR Loans or SOFR Loans as the Borrower may request in accordance herewith; *provided* that all Borrowings made on the Effective Date must be made as ABR Borrowings unless the Borrower shall have given the notice required for a SOFR Borrowing under Section 2.03.

(c) At the commencement of each Interest Period for any Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; *provided* that a SOFR Borrowing that results from a continuation of an outstanding SOFR Borrowing may be in an aggregate amount that is equal to such outstanding Borrowing. ABR Borrowings may be in any amount. Borrowings of more than one Type may be outstanding at the same time; *provided* that there shall not at any time be more than a total of 3 SOFR Borrowings outstanding under a Facility at the same time.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing under a Facility if the Interest Period requested with respect thereto would end after the Maturity Date for such Facility.

#### SECTION 2.03 Request for Borrowings.

(a) To request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing (1) in the case of any SOFR Borrowing, not later than 3:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing, which Borrowing (or such shorter period of time as may be agreed to by the Administrative Agent (acting at the Direction of the Required Lenders)) or (2) in the case of an ABR Borrowing, not later than 3:00 p.m., New York City time, one Business Day before the date of the proposed Borrowing (or such shorter period of time as may be agreed to by the Administrative Agent (acting at the Direction of the Required Lenders)). Each such Borrowing Request shall be irrevocable and shall be delivered by hand delivery, facsimile or other electronic



transmission to the Administrative Agent and shall be signed by the Borrower. Each such Borrowing Request shall specify the following information:

- (i) the Facility, Class and Type of Loans to be borrowed or to which existing Loans are to be converted;
- (A) the aggregate amount of such Borrowing;
- (B) the date of such Borrowing, which shall be a Business Day;
- (C) [reserved]; and
- (D) in the case of a SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period".

If no Interest Period is specified with respect to any requested SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. If no currency is specified with respect to any requested SOFR Borrowing, then the Borrower shall be deemed to have requested that the Borrowing be denominated in Dollars. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the applicable Facility and Class of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

#### SECTION 2.04 Funding of Borrowing.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds in Dollars by 2:00 p.m., New York City time to the Applicable Account of the Administrative Agent most-recently designated by it for such purpose by notice to the Lenders.

(b) Upon receipt of funds from each Lender in accordance with Section 2.04(a) above, the Administrative Agent shall fund the Effective Date Direct Borrowing in accordance with the Flow of Funds, and the net proceeds of the Loans less the amount of the Effective Date Direct Borrowing shall be deposited in the Loan Proceeds Account pursuant to the Escrow Agreement. Unless the Administrative Agent shall have been notified by any Lender prior to the date of any such Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing to be made on the Effective Date, the Administrative Agent shall assume that such Lender has made such amount available to the Administrative Agent on the Effective Date, and the Administrative Agent, in reliance upon such assumption, shall make such amount available to the Borrower and/or make a deposit into the Loan Proceeds Account a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made such amount available to the Borrower and/or deposited such amount into the Loan Proceeds Account, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent in Dollars. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if paid by such Lender, the



Overnight Bank Funding Rate or (ii) if paid by the Borrower, the then applicable rate of interest or fees, calculated in accordance with Section 2.11, for the respective Loans. For the avoidance of doubt, all parties agree that all Loans shall be funded and accrue interest starting on the Effective Date, including any Loans the proceeds of which have been deposited into the Loan Proceeds Account.

SECTION 2.05     Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section; provided that, notwithstanding anything to the contrary herein, no Loan may be converted into or continued as a Loan denominated in a different currency but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and confirmed promptly to the Administrative Agent by hand delivery, facsimile or other electronic transmission to the Administrative Agent in the form of a written Interest Election Request signed by the Borrower.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.03:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a SOFR Borrowing; and

(iv) if the resulting Borrowing is to be a SOFR Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender's portion of each resulting Borrowing.



(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a SOFR Borrowing denominated in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing.

Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, with respect to Loans denominated in Dollars, (i) no outstanding Borrowing under any Facility may be converted to or continued as a SOFR Borrowing and (ii) unless repaid, each SOFR Borrowing of Loans shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

#### SECTION 2.06 Termination and Reduction of Commitments.

(a) [Reserved].

(b) Term Commitments.

(i) Unless previously terminated, the Term Commitments shall terminate at 5:00 p.m., New York City time, on the Effective Date.

(ii) Notwithstanding anything to the contrary, any amount of the Term Commitment that is not borrowed on the Effective Date shall automatically be deemed terminated.

#### SECTION 2.07 Repayment of Loans; Evidence of Debt.

(a) [Reserved].

(b) Term Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender as provided in Section 2.08.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof, the currency thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraphs (c) or (d) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein, *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement. In the event of any inconsistency between the entries made pursuant to paragraphs (c) and (d) of this Section, the accounts maintained by the Administrative Agent pursuant to paragraph (d) of this Section shall control.



(f) Any Lender may request through the Administrative Agent that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form provided by the Administrative Agent and approved by the Borrower.

SECTION 2.08 Amortization of Term Loans.

(a) [Reserved].

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Maturity Date applicable to such Term Loans, or, if such date is not a Business Day, on the next preceding Business Day.

(c) Any prepayment of a Borrowing of any Class of Term Loans (i) pursuant to Section 2.09(a)(i) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Borrowings of such Class of Term Loans to be made pursuant to this Section as directed by the Borrower (and absent such direction in direct order of maturity) and (ii) pursuant to Section 2.09(b) or 2.09(c) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Borrowings of such Class of Term Loans to be made pursuant to this Section in direct order of maturity.

(d) Prior to any repayment of any Borrowings of any Class of Term Loans hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class of Term Loans to be repaid and shall notify the Administrative Agent in writing (via hand delivery or facsimile) of such election not later than 3:00 p.m., New York City time, two Business Day before the scheduled date of such repayment. Each repayment of a Borrowing of Term Loans shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Borrowings of Term Loans shall be accompanied by accrued interest on the amount repaid.

SECTION 2.09 Prepayment of Loans.

(a) The Borrower, with the prior written consent of the Required Lenders, may prepay any Borrowing in whole or in part, without premium or penalty.

(b) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings, any Intermediate Parents, the Borrower or any of the Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term “Prepayment Event,” on the date of such Prepayment Event), prepay Term Loans in an aggregate amount equal to 100% of the amount of such Net Proceeds; *provided that*, pending such prepayment, the Borrower shall hold such Net Proceeds in a deposit account subject to an Account Control Agreement consistent with the requirements of the Collateral Agreement or the Debenture Agreement (as applicable) (to the extent the assets sold were Collateral).

(c) Following the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2023, the Borrower shall prepay Term Loans in an aggregate amount equal to the ECF Percentage of Excess Cash Flow for such fiscal year. Each prepayment pursuant to this paragraph shall be made on or before the date that is five Business Days after the date on which financial statements are required to be delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated.



(d) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (e) of this Section. In the event of any mandatory prepayment of Term Loans made at a time when more than one Class of Term Loans remain outstanding, the Borrower shall select the Loans to be prepaid so that the aggregate amount of such prepayment is allocated between such Classes of Term Loans pro rata based on the aggregate principal amount of outstanding Borrowings of each such Class; *provided* that any Lender may elect, by notice to the Administrative Agent in writing (via hand delivery or facsimile) at least one Business Day prior to the prepayment date, to decline all or any portion of any prepayment of its Loans of any such Class pursuant to this Section (other than an optional prepayment pursuant to paragraph (a)(i) of this Section or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Loans of any such Class but was so declined may be retained by the Borrower and the Restricted Subsidiaries (such amounts, “Retained Declined Proceeds”). Optional prepayments of Borrowings shall be allocated among the Classes of Borrowings as directed by the Borrower.

(e) The Borrower shall notify the Administrative Agent in writing (via hand delivery, facsimile or other electronic communication) of any prepayment hereunder (i) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment and (ii) in the case of prepayment of a SOFR Borrowing, not later than 11:00 a.m. (New York City time), three Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; *provided* that, so long as the Administrative Agent is notified prior to the prepayment date, a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type and currency as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11. At the Borrower’s election in connection with any prepayment pursuant to this Section 2.09, such prepayment shall not be applied to any Loan of a Defaulting Lender and shall be allocated ratably among the relevant non-Defaulting Lenders.

(f) Notwithstanding any other provisions of Section 2.09(b) or (c), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event set forth in clause (a) of the definition thereof by a Foreign Subsidiary giving rise to a prepayment pursuant to Section 2.09(b) (a “Foreign Prepayment Event”) or Excess Cash Flow are prohibited or delayed by any Requirement of Law from being repatriated to the Borrower, the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in Section 2.09(b) or (c), as the case may be, and such amounts may be retained by the applicable Foreign Subsidiary so long as the applicable Requirement of Law will not permit repatriation to the Borrower (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable Requirement of Law to permit such repatriation), and to the extent such repatriation of any of such affected Net Proceeds or Excess Cash Flow becomes permitted under the applicable Requirement of Law, such repatriation will be promptly effected and such repatriated Net Proceeds or Excess Cash Flow will be promptly (and in any event not later than three Business Days after such repatriation) applied (net



of additional Taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.09(b) or (c), as applicable, and (B) to the extent that and for so long as the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) reasonably agree that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, the Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Loans at the times provided in Section 2.09(b) or (c), as the case may be, and such amounts may be retained by the applicable Foreign Subsidiary; *provided* that if the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) agree that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event or Excess Cash Flow would no longer have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, such Net Proceeds or Excess Cash Flow shall be promptly (and in any event not later than three Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.09(b) or (c), as applicable.

SECTION 2.10     Fees.

(a)     [Reserved].

(b)     [Reserved].

(c)     [Reserved].

(d)     The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and each applicable Agent).

(e)     All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

(f)     Notwithstanding the foregoing, the Borrower shall not be obligated to pay any amounts to any Defaulting Lender pursuant to this Section 2.10.

(g)

(i)     The Borrower agrees to pay to the Administrative Agent, for the account of the funds and/or accounts affiliated with, or managed and/or advised by, the entities set forth on Schedule 2.12(b), on file with the Administrative Agent (the “Backstop Allocation Schedule”, and such entities, together with their respective successors and permitted assignees, or any fronting bank or other funding agent operating on their behalf, the “Backstop Parties”) ratably in accordance with the amounts set forth opposite each such Backstop Party’s name on the Backstop Allocation Schedule, on the Effective Date a non-refundable fee equal to 6.0% of the Term Loan Commitments actually provided on the Effective Date, which fee shall be earned, due and payable in cash on the Effective Date (the “Backstop Fee”).

(ii)    The Borrower agrees to pay to the initial Lender hereunder, for the account of such Lender, the fees set forth in a separate fee letter with such initial Lender.



(iii) The Borrower agrees to pay to the Administrative Agent for the account of each Lender with a Term Loan Commitment a non-refundable commitment fee equal to 3.0% of the Term Loan Commitments actually provided on the Effective Date, which fee shall be earned, due and payable in cash on the Effective Date (the “Commitment Fee”).

(h) All Lender Payments shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of the Lender Payments shall be refundable under any circumstances.

#### SECTION 2.11 Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each SOFR Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2.00% per annum plus the rate applicable to Term Loans that are ABR Loans as provided in paragraph (a) of this Section; *provided* that no amount shall be payable pursuant to this Section 2.11(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, *provided* that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. Notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, Loans, the proceeds of which are held in the Loan Proceeds Account, shall be deemed to be made and funded hereunder on the Effective Date and shall accrue interest in accordance with Section 2.13 from the Effective Date.

(e) All computations of interest for ABR Loans (including ABR Loans determined by reference to the Term SOFR Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.16, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.12 Benchmark Replacement. If at least two Business Days prior to the commencement of any Interest Period for a SOFR Borrowing:



(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate for such Interest Period with respect to a Borrowing; or

(ii) the Administrative Agent is advised by the Required Lenders that the Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, "Impacted Loans"),

then, in the case of clause (a) or (b) above, the Administrative Agent shall give notice thereof (and, if requested by the Borrower, reasonably acceptable evidence of such determination) to the Borrower and the Lenders by telephone, facsimile or other electronic communication as promptly as practicable thereafter.

Upon receipt of such notice and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing shall be ineffective and (ii) all Borrowings denominated in Dollars shall be made as an ABR Borrowing and the utilization of the Term SOFR Rate component in determining the Alternate Base Rate shall be suspended.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is based upon Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with the use, administration, adoption or implementation of Term SOFR, the Administrative Agent (at the Direction of the Required Lenders) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use or administration of Term SOFR.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.12(d) and (v) the commencement of any



Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a SOFR Borrowing into a request for a Borrowing of or conversion to an ABR Borrowing. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any SOFR Loan is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to the Term SOFR Rate, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.12, any SOFR Loan shall on the last day of the Interest Period applicable to such Loan be converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day.

#### SECTION 2.13 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Term SOFR Rate); or

(ii) impose on any Lender or the applicable interbank market any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or SOFR Loans; or

(iii) subject any Lender to any Taxes on its Loans, letters of credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;



and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such increased costs actually incurred or reduction actually suffered, *provided* that to the extent any such costs or reductions are incurred by any Lender as a result of any requests, rules, guidelines or directives enacted or promulgated under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Basel III after the Effective Date, then such Lender shall be compensated pursuant to this Section 2.13(a) only to the extent such Lender is imposing such charges on similarly situated borrowers under the other syndicated credit facilities under which such Lender is a lender. Notwithstanding the foregoing, this paragraph will not apply to (A) Indemnified Taxes or Other Taxes or (B) Excluded Taxes.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity requirements), then, from time to time upon request of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's for any such reduction actually suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or such Lender's holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14     [Reserved].

SECTION 2.15     Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Requirements of Law. If the applicable Withholding Agent shall be required by applicable Requirements of Law to withhold or deduct any Taxes from such payments, then (i) the applicable Withholding Agent shall make such withholdings or deductions, (ii) the applicable Withholding Agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law and (iii) if the Tax in question is an Indemnified Tax or Other Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after all required deductions of Indemnified Taxes or Other Taxes have been made (including deductions applicable to additional amounts payable under this Section 2.15) the Administrative Agent and any



applicable Lender receives an amount equal to the sum it would have received had no such withholdings or deductions of Indemnified Taxes or Other Taxes been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law, or at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes.

(c) Without duplication of amounts paid by the Borrower pursuant to Sections 2.15(a) or (b), the Borrower shall indemnify the Administrative Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) payable or paid by, or required to be withheld from a payment to, the Administrative Agent or such Lender, as the case may be, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any Lender seeking indemnity pursuant to this Section 2.15(c) shall promptly notify the Borrower of the imposition of the relevant Indemnified Taxes or Other Taxes. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.15, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.15(e)(ii)(1), (ii)(2) and (ii)(4) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the foregoing:

(1) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;



(2) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code shall to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) in the case of such a Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty,

(B) executed copies of IRS Form W-8ECI,

(C) in the case of such a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit P-1 to the effect that such Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, or

(D) to the extent such Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-2 or Exhibit P-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-4 on behalf of each such direct and indirect partner;

(3) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail



to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (4), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(ii) The Administrative Agent shall deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement, either: (i) two duly completed copies of IRS Form W-9, or (ii) two duly completed copies of IRS Form W-8IMY, with the effect that the Borrower may make payments to the Administrative Agent, to the extent such payments are received by the Administrative Agent as an intermediary, without deduction or withholding of any Taxes imposed by the United States. The Administrative Agent, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 30 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the



amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (g).

(h) The agreements in this Section 2.15 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. For the avoidance of doubt, for purposes of this Section 2.15, the term "Requirements of Law" includes FATCA.

#### SECTION 2.16 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees, or of amounts payable under Section 2.13 or 2.15, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m. (New York City time)), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent (at the Direction of the Required Lenders), be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to such account as may be specified by the Administrative Agent. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment (other than payments on the SOFR Loans) under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension. Except as otherwise expressly provided herein, all such payments shall be made in Dollars to such account as may be specified by the Administrative Agent.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due under any Facility, such funds shall be applied, (1) first, towards payment of interest and fees then due under such Facility, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (2) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans of a given Class resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and accrued interest thereon than the proportion received by any other Lender with outstanding Loans of the same Class, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of such Class to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class, *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of



funds arising from existence of a Defaulting Lender), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans of that Class or any increase in the Applicable Rate in respect of Loans. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Overnight Bank Funding Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(a), 2.04(b), 2.16(d) or 9.03(c), then the Administrative Agent may, in its discretion and in the order determined by the Administrative Agent (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

#### SECTION 2.17 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority or other recipient for the account of any Lender pursuant to Section 2.15 or any event that gives rise to the operation of Section 2.21, then following request by the Borrower such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder affected by such event, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or Section 2.15 or mitigate the applicability of Section 2.21, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.13 or gives notice under Section 2.21, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority or other recipient for the account of any Lender pursuant to Section 2.15, or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in



accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation), *provided* that (A) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consents, in each case, shall not unreasonably be withheld or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued but unpaid interest thereon, accrued but unpaid fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (C) the Borrower or such assignee shall have paid (unless waived) to the Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) in the case of any such assignment resulting from a claim for compensation under Section 2.13, payment required to be made pursuant to Section 2.15 or a notice given under Section 2.21, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.

SECTION 2.18     [Reserved].

SECTION 2.19     [Reserved].

SECTION 2.20     Defaulting Lenders.

(a)     General. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i)     Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.02.

(ii)    Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, [reserved]; third, [reserved]; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan under the relevant Facility in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account subject to an Account Control Agreement and released in order to satisfy obligations of that Defaulting Lender to fund Loans under the relevant Facility; sixth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the



payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, subject to the last sentence of Section 2.09(e), to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction.

(iii) Certain Fees. That Defaulting Lender shall not be entitled to receive or accrue any commitment fee pursuant to Section 2.10(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure.

(i) If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(ii) [Reserved].

SECTION 2.21 Illegality. If any Lender reasonably determines that any law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, the Term SOFR Rate (whether denominated in Dollars), or to determine or charge interest rates based upon the Term SOFR Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Term SOFR Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon three Business Days' notice from such Lender (with a copy to the Administrative Agent), prepay or (I) if applicable and such Loans are denominated in Dollars, convert all SOFR Loans denominated in Dollars of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, or (II), and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term SOFR Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate applicable to such Lender without reference to the Term SOFR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate. Each Lender agrees to notify the Administrative Agent and the Borrower in



writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.22     [Reserved].

SECTION 2.23     [Reserved].

SECTION 2.24     [Reserved].

SECTION 2.25     [Reserved].

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Lenders as of the Effective Date (after giving effect to the Transactions) that:

SECTION 3.01     Organization; Powers. Each of Holdings, each Intermediate Parent (if any), the Borrower and each Restricted Subsidiary is (a) duly organized or incorporated (as applicable), validly existing and in good standing (to the extent such concept exists in the relevant jurisdictions) under the laws of the jurisdiction of its organization, (b) has the corporate or other organizational power and authority to carry on its business as now conducted and to execute, deliver and perform its obligations under each Loan Document to which it is a party, and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the case of clause (a) (other than with respect to any Loan Party), clause (b) (other than with respect to Holdings and the Borrower and any other Loan Party in the case of the execution and delivery of any Loan Document to which it is a party) and clause (c), where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02     Authorization; Enforceability. This Agreement and each other Loan Document has been duly authorized, executed and delivered by each of Holdings, each Intermediate Parent, the Borrower and each other Loan Party party thereto and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Holdings, such Intermediate Parent, the Borrower or such Loan Party, as the case may be, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03     Governmental and Third-Party Approvals; No Conflicts. The execution, delivery and performance of the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or third-party, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate (i) the Organizational Documents of Holdings, the Borrower or any other Loan Party, or (ii) any Requirements of Law applicable to Holdings, the Borrower or any other Loan Party or any of its Restricted Subsidiaries, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon Holdings, the Borrower or any other Loan Party or any of its Subsidiaries or their respective assets, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of Holdings, the Borrower or any other Loan Party or any



of its Subsidiaries, except Liens created under the Loan Documents or otherwise permitted under Section 6.02, except (in the case of each of clauses (a), (b)(ii) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right as the case may be, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.04      Financial Condition; No Material Adverse Effect.

(a)      The Historical Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly indicated therein, including the notes thereto, and (ii) fairly present in all material respects the financial condition of the Borrower and its Restricted Subsidiaries as of the respective dates thereof and the consolidated results of their operations for the respective periods then ended in accordance with GAAP consistently applied during the periods referred to therein, except as otherwise expressly indicated therein, including the notes thereto.

(b)      As of the Effective Date, all material written factual information (other than projections, estimates, other forward-looking information and information of a general economic nature or industry specific nature, the “Information”) that has been made available to any Lenders, the Specified Lender Advisors or the Administrative Agent, directly or indirectly, by, or at the request of, Holdings, the Borrower or any of its Subsidiaries or by any of their respective representatives on behalf of Holdings, the Borrower or any of its Subsidiaries, in connection with the Loans or other transactions contemplated hereby, when taken as a whole, after giving effect to all supplements and updates provided thereto, was correct in all material respects as of the date such Information, supplement or update was furnished to such Persons and did not, taken as a whole as of such date contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto); provided that, with respect to any projections, Holdings and the Borrower represent only that such projections, when taken as a whole, were prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered, it being understood that (i) such projections are merely a prediction as to future events and are not to be viewed as facts or a guarantee of performance, (ii) such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries and (iii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

(c)      [Reserved].

(d)      Other than as disclosed in writing to the Specified Lender Advisors and/or the Term Lenders prior to the Effective Date, since the last day of the fiscal year ending closest to December 31, 2022, there has been no Material Adverse Effect.

SECTION 3.05      Properties; Insurance.

(a)      Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary has good title to, or valid leasehold or subleasehold, as applicable, interests in, all its real and personal property material to its business (including the Mortgaged Properties, if any), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or



to utilize such properties for their intended purposes, which such defects in title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Effective Date, Schedule 3.05 contains a true and complete list of all Material Real Property owned by the Borrower and its Subsidiaries.

(c) Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary maintains in effect insurance that complies, in all material respects, with the requirements of Section 5.07.

#### SECTION 3.06 Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Responsible Officer of Holdings or the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) has, to the knowledge of a Responsible Officer of Holdings or the Borrower, any basis to reasonably expect that Holdings, the Borrower or any Restricted Subsidiary will become subject to any Environmental Liability.

SECTION 3.07 Compliance with Laws and Agreements. Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary is in compliance with (a) its Organizational Documents, (b) all Requirements of Law applicable to it or its property and (c) all indentures and other agreements and instruments binding upon it or its property, except, in the case of clauses (b) and (c) of this Section, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08 Investment Company Status. None of Holdings, the Intermediate Parents, the Borrower or any other Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended from time to time.

SECTION 3.09 Taxes. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns required to have been filed and (b) have paid or caused to be paid all Taxes required to have been paid (whether or not shown on a Tax return) including in their capacity as tax withholding agents, except any Taxes (i) that are not overdue by more than 30 days or (ii) that are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Holdings, the Borrower or such Restricted Subsidiary, *provided* that Holdings, such Intermediate Parent, the Borrower or such Restricted Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP.

#### SECTION 3.10 ERISA.



(a) Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur, (ii) no Plan has failed to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived, (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(c) With respect to any Foreign Pension Plan, as of the date hereof, except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) each such plan is in compliance with all requirements of law applicable and the respective requirements of the governing documents for such plan, (ii) none of any Loan Party or any of their Subsidiaries, Foreign Subsidiaries or any of their respective directors, officers, employees or agents has engaged in a transaction which would subject any Loan Party or any of its Subsidiaries or Foreign Subsidiaries, directly or indirectly, to a material tax or civil penalty, (iii) reserves have been established in the financial statements furnished to Lenders in respect of any unfunded liabilities in accordance with applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained, and (iv) the present aggregate value of accumulated benefit obligations of all Foreign Pension Plans did not, as of the most recent statements available, exceed the aggregate value of the assets for all such Foreign Pension Plans.

SECTION 3.11 Disclosure. As of the Effective Date, no report, financial statements, certificates or other written information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading, *provided* that, with respect to projected financial information, Holdings and the Borrower represent only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, it being understood that any such projected financial information relates to future events and are not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, no assurance can be given that any particular projected financial information will be realized and that actual results during the period or periods covered thereby may differ significantly from the corresponding projected financial information and such differences could be material.

SECTION 3.12 Subsidiaries. As of the Effective Date, Schedule 3.12 sets forth the name of each Subsidiary and the registered ownership interest of Holdings, each Intermediate Parent, the Borrower or another Subsidiary in each Subsidiary.



SECTION 3.13     Intellectual Property; Licenses, Etc. Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary owns, licenses or possesses the right to use all of the Intellectual Property that is reasonably necessary for the operation of its business as currently conducted, and, without conflict with the rights of any Person, except to the extent the failure to have any such rights or such conflicts, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Holdings, the Borrower or any Restricted Subsidiary do not and will not, in the operation of their businesses as currently conducted, infringe upon, misuse, dilute, misappropriate or otherwise violate any Intellectual Property rights held by any Person except for such infringements, misuses, dilutions, misappropriations or violations that, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the Intellectual Property owned by Holdings, the Intermediate Parents, the Borrower or any of the Restricted Subsidiaries is pending or, to the knowledge of any Responsible Officer of Holdings or the Borrower, threatened in writing against Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.14     [Reserved].

SECTION 3.15     Senior Indebtedness. The Loan Document Obligations constitute “Senior Indebtedness” (or any comparable term) under and as defined in the documentation governing any Subordinated Indebtedness.

SECTION 3.16     Federal Reserve Regulations. None of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, to purchase or carry any margin stock or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

SECTION 3.17     Use of Proceeds. The Borrower will use the proceeds of the Loans made on the Effective Date to finance working capital and other general corporate purposes in accordance with the Approved Budget (subject to Permitted Variances).

SECTION 3.18     PATRIOT Act, OFAC and FCPA.

(a)     The Borrower will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of funding (i) any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) any other transaction that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(b)     The Borrower and the Restricted Subsidiaries will not use the proceeds of the Loans directly, or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or any other applicable anti-corruption laws.



(c) None of Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries has, in the past three years, committed a violation of applicable Sanctions, Title III of the USA Patriot Act or the FCPA or any other applicable anti-corruption laws.

(d) None of Holdings, the Intermediate Parents, the Borrower or any of the Subsidiaries, or, to the knowledge of the Borrower, any director, officer, employee or agent of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary is an individual or entity currently on the list of Specifically Designated Nationals and Blocked Persons administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") or any other Sanctions list, nor is Holdings, the Borrower or any Restricted Subsidiary located, organized or resident in a country or territory that is the subject of comprehensive Sanctions.

SECTION 3.19 Security Documents. Except as otherwise expressly provided hereby or under any other Loan Documents, the provisions of the Security Documents, together with such filings and other actions required to be taken hereby or by the applicable Security Documents (including the delivery to Collateral Agent of any Pledged Collateral (as defined in the Collateral Agreement) required to be delivered pursuant to the applicable Security Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable perfected first priority Lien (subject to Liens permitted by Section 6.02) on all right, title and interest of Holdings, the Intermediate Parents, the Borrower and the applicable Subsidiary Loan Parties, respectively, in the Collateral described therein.

#### ARTICLE IV CONDITIONS

SECTION 4.01 Effective Date. The obligations of the Lenders to make Loans hereunder shall not become effective until the date on which each of the following conditions shall be satisfied in the Required Lenders sole discretion (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Kirkland & Ellis LLP, New York counsel for the Loan Parties, Polsinelli PC, Missouri counsel, and Gibson, Dunn & Crutcher UK LLP, English counsel to the Lenders. The Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received a certificate of each Loan Party, dated the Effective Date, substantially in the form of Exhibit G-1 with appropriate insertions, executed by any Responsible Officer of such Loan Party, and including or attaching the documents referred to in paragraph (d) of this Section.

(d) (Other than in respect of any UK Subsidiary that is a Loan Party) the Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) resolutions of the Board of Directors and/or similar governing bodies of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by its secretary, an assistant secretary or a



Responsible Officer as being in full force and effect without modification or amendment, and (iv) a good standing certificate (to the extent such concept exists) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Agents shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on or prior to the Effective Date, including the fees of the Specified Lender Advisors, to the extent invoiced prior to the Effective Date (except as otherwise reasonably agreed by Borrower), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel including the fees of Gibson, Dunn & Crutcher LLP, ArentFox Schiff LLP, Bryan Cave Leighton Paisner LLP, Gowling WLG International Limited, Nassiry Law) required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) Subject to Schedule 5.14, the Collateral and Guarantee Requirement shall have been satisfied.

(g) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received the Historical Financial Statements.

(h) The Administrative Agent shall have received a Borrowing Request to be made on the Effective Date meeting the requirements of Section 2.03.

(i) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received, prior to the Effective Date, all documentation and other information about the Loan Parties that shall have been reasonably requested in writing at least one day prior to the Effective Date and that the Administrative Agents or the Specified Lender Advisors on behalf of the Lenders have reasonably determined is required by United States regulatory authorities under applicable "know your customer" and anti- money laundering rules and regulations, including without limitation Title III of the USA Patriot Act.

(j) The Borrower shall have delivered to the Administrative Agent a certificate dated as of the Effective Date, to the effect set forth in Section 4.01(k).

(k) The representations and warranties contained in Article III shall be true and correct in all material respects on and as of the Effective Date; provided that (A) in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (B) if any representation and warranty is qualified by or subject to a "material adverse effect", "material adverse change" or similar term or qualification, (1) the definition thereof shall be the definition of "Material Adverse Effect" for purposes of the making or deemed making of such representation and warranty on, or as of, the Effective Date (or any date prior thereto) and (2) such representation and warranty shall be true and correct in all respects.

(l) The Administrative Agent and Specified Lender Advisors on behalf of the Lenders shall have received the following documents in form and substance satisfactory to the Required Lenders, duly executed and dated the Effective Date:

- (i) the RSA;
- (ii) the Escrow Agreement;
- (iii) the Approved Budget;



- (iv) the Perfection Certificate;
- (v) the Effective Date Intercreditor Agreement;
- (vi) the Amendment to Existing Credit Agreement;
- (vii) the KPI Report with respect to March 2023;
- (viii) evidence of the completed transfer of the Specified Real Estate Assets back to Cyxtera Communications, LLC, a Missouri limited liability company; and
- (ix) mortgage in form and substance satisfactory to the Required Lenders with respect to the Specified Real Estate Assets.

SECTION 4.02 Conditions to Withdrawal of Escrow Term Loans from Loan Proceeds Account. The obligations of the Lenders to permit any Withdrawal after the Effective Date (each, a “Credit Event”) are subject to the satisfaction or waiver of the following conditions precedent:

- (a) With respect to each Withdrawal after the Effective Date, the Administrative Agent shall have received a written Withdrawal Notice by no later than 3:00 p.m. New York City time on the Monday of the week for a proposed funding of such Withdrawal on the Thursday of such week, which Withdrawal Notice shall include an attachment, signed by a Responsible Officer of the Borrower, certifying that the Borrower has borrowed under its Amended Existing Credit Agreement to the maximum extent of availability thereunder;
- (b) At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing (including with respect to compliance with the Approved Budget (subject to Permitted Variances) and the Milestones) and shall be in compliance with the Minimum Liquidity Covenant;
- (c) Without giving effect to the Credit Event and the use of proceeds thereof, the Borrower was in compliance with Section 5.21 as of the most recently ended testing period for which reports were delivered under Section 5.21;
- (d) The RSA shall not have been terminated and shall be in full force and effect and no default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof;
- (e) The minimum amount of such Withdrawal shall not be less than the Borrowing Minimum and shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple;
- (f) All representations the representations of the Loan Parties set forth in this Agreement shall, in each case, be true and correct in all material respects as of the Effective Date or the date of such Credit Event, as applicable (or true and correct in all material respects as of a specified date, if earlier) (except to the extent such representations and warranties are qualified by “materiality” or “Material Adverse Effect,” in which case such representations and warranties shall be true and correct in all respects;
- (g) No motion, pleading or application seeking relief affecting the provision of the financing contemplated hereunder in a manner that is adverse to the Lenders, in their capacities as such, shall have been filed in the Bankruptcy Court by any Loan Party without the prior written consent of the



Administrative Agent (at the Direction of the Required Lenders) or Escrow Agent (at the Direction of the Required Lenders);

(h) After due inquiry, each Loan Party is unaware of any fraudulent activities in connection with its business;

(i) The Borrower shall be in compliance in all respects with the Milestones;

(j) The Administrative Agent and the Required Lenders shall have received the applicable Approved Budget; and

(k) The Agents shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on such date, including the fees of the Specified Lender Advisors, to the extent invoiced prior to such Credit Event, as applicable (except as otherwise reasonably agreed by Borrower), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party under any Loan Document.

On any date on which the Loans shall have been accelerated, any amounts remaining in the Loan Proceeds Account, as the case may be, may be applied by the Administrative Agent (at the Direction of the Required Lenders) to reduce the Loans then outstanding, in accordance with Section 2.16. None of the Loan Parties shall have (and each Loan Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Loan Proceeds Account upon the occurrence and during the continuance of any Default or Event of Default. It is understood and agreed that the Administrative Agent may not deliver a "Termination Notice" (as defined and under the Escrow Agreement) unless and until an Event of Default has occurred and is continuing.

By delivery of any Withdrawal Notice (and acceptance of proceeds of any Credit Event), the Borrower shall be deemed to have further represented and warranted to the Lenders that the calculations of the Withdrawal Condition are reasonable and accurate based on the facts and circumstances in existence at the time of its preparation, calculation and delivery.

Notwithstanding the foregoing, if the Required Lenders determine that the Borrower has failed to satisfy any of the conditions precedent set forth in Section 4.02 (with respect to any Withdrawal) of this Agreement for a Withdrawal Notice and so advise the Administrative Agent in writing, the Administrative Agent shall decline to fund such Withdrawal Notice.

The acceptance by the Borrower of the Loans or proceeds of a Credit Event shall conclusively be deemed to constitute a representation by the Borrower that each of the conditions precedent set forth in this Section 4.02 shall have been satisfied in accordance with its respective terms or shall have been irrevocably waived by the applicable relevant Person; provided, however, that the making of any such Credit Event (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by the Administrative Agent, any Lender or other Secured Party of the provisions of this Article IV on any future occasion or operate as a waiver of (i) the right of Administrative Agent and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent Credit Event, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of the Administrative Agent or any party as a result of any such failure of the Loan Parties to comply.



ARTICLE V  
AFFIRMATIVE COVENANTS

Until the Commitments shall have expired or been terminated, the principal of and interest on each Loan and all fees, expenses and other amounts (other than contingent amounts not yet due) payable under any Loan Document shall have been paid in full, each of Holdings and the Borrower covenants and agrees with the Lenders that:

SECTION 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) commencing with the fiscal year ending December 31, 2023, on or before the date on which such financial statements are required or permitted to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 120 days after the end of such fiscal year, audited consolidated balance sheet and audited consolidated statements of operations, comprehensive income (loss), stockholders' equity (or, to the extent such fiscal year ends prior to the Effective Date, parent net investment) and cash flows of the Borrower as of the end of and for such fiscal year, and related notes thereto, setting forth in each case, in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP, PricewaterhouseCoopers LLP or any other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than any exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, (A) an upcoming maturity date of any Indebtedness under this Agreement or Material Indebtedness occurring within one year from the time such opinion is delivered or (B) any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of the end of and for such year on a consolidated basis in accordance with GAAP consistently applied;

(b) commencing with the financial statements for the fiscal quarter ending March 31, 2023 on or before the date on which such financial statements are required or permitted to be filed with the SEC with respect to each of the first three fiscal quarters of each fiscal year of the Borrower (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 60 days after the end of each such fiscal quarter, unaudited consolidated balance sheet and unaudited consolidated statements of operations, comprehensive income (loss) and cash flows of the Borrower as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case, in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year (in each case, other than comparisons to financial statements in prior periods that were not required to be delivered hereunder), all certified by a Financial Officer as presenting fairly in all material respects the financial position and results of operations and cash flows of the Borrower and the Subsidiaries as of the end of and for such fiscal quarter and such portion of the fiscal year on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes and which may exclude the effects of purchase accounting with respect to the Transactions or any Permitted Investment or similar Investment permitted under this Agreement;"

(c) within 30 days after the end of each month, commencing with the month ending April 30, 2023, the consolidated balance sheet of the Borrower as at the end of such month and the related consolidated statements of income of the Borrower for such month; and



(d) not later than five days after any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations in the case of financial statements delivered under paragraph (a) above, beginning with the financial statements for the fiscal year of the Borrower ending December 31, 2023, of Excess Cash Flow for such fiscal year and (iii) in the case of financial statements delivered under paragraph (a) above, setting forth a reasonably detailed calculation of the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Subsidiary in respect of any event described in clause (a) of the definition of the term “Prepayment Event” and the portion of such Net Proceeds that has been used to prepay the Loans in accordance with Section 2.09(b);

(e) commencing with the fiscal year ending December 31, 2024, not later than 120 days after the commencement of each fiscal year of the Borrower, a detailed consolidated budget for the Borrower and its Subsidiaries for such fiscal year (including a projected consolidated balance sheet and consolidated statements of projected operations and cash flows as of the end of and for such fiscal year and setting forth the material assumptions used for purposes of preparing such budget) in the form customarily provided by management of the Borrower (or otherwise provided to the Investors);

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) filed by Holdings, the Borrower or any Subsidiary (or, if the Borrower is a subsidiary of the IPO Entity, the IPO Entity) with the SEC or with any national securities exchange; and

(g) reasonably promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent on its own behalf or on behalf of any Lender may reasonably request in writing.

(h) within 30 days after the end of each month, a report relating to such month (a “KPI Report”) containing the key performance indicators set forth in the form of such report agreed with the Specified Lender Advisors prior to the Effective Date and delivered with respect to March 2023 pursuant to Section 4.01(l).

Notwithstanding the foregoing, the obligations in paragraphs (a), (b), (c) and (i) of this Section 5.01 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the Form 10-K or 10-Q (or the equivalent), as applicable, of the Borrower (or a parent company thereof) filed with the SEC or with a similar regulatory authority in a foreign jurisdiction or (B) the applicable financial statements of Holdings (or any Intermediate Parent or any direct or indirect parent of Holdings); *provided* that to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Borrower and its Subsidiaries on a stand-alone basis, on the other hand, and to the extent such information is in lieu of information required to be provided under paragraph (a) of this Section 5.01, such materials are accompanied by a report and opinion of KPMG LLP, PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than any exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, (A) an upcoming maturity date of any Indebtedness under this Agreement or Material Indebtedness



occurring within one year from the time such opinion is delivered or (B) any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of the end of and for such year on a consolidated basis in accordance with GAAP consistently applied.

Documents required to be delivered pursuant to paragraphs (a), (b), (c), (f) or (i) (to the extent any such documents are included in materials otherwise filed with the SEC) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earlier of the date (A) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's website on the Internet or (B) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided that*: (i) the Borrower shall deliver such documents to the Administrative Agent upon its reasonable request until a written notice to cease delivering such documents is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Company Materials") by posting the Company Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities.

The Borrower hereby agrees that it will, upon the Administrative Agent's reasonable request, identify that portion of the Company Materials that may be distributed to the Public Lenders and that (i) all such Company Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Company Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Company Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Holdings, the Borrower or their respective securities for purposes of United States federal and state securities laws (*provided, however*, that to the extent such Company Materials constitute Information, they shall be treated as set forth in Section 9.12); (iii) all Company Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (iv) the Administrative Agent shall be entitled to treat any Company Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

**SECTION 5.02      Notices of Material Events.** Promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof, Holdings or the Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) written notice of the following:

- (a) the occurrence of any Default;



(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of Holdings or the Borrower, affecting the Borrower or any of its Subsidiaries or the receipt of a written notice of an Environmental Liability or the occurrence of an ERISA Event or a Foreign Plan Event, in each case either, individually or when combined with other such events, could reasonably be expected to result in a Material Adverse Effect; and

(c) the occurrence of any event that, individually or when combined with other such events, has resulted in or could reasonably be expected to result in a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

#### SECTION 5.03 Information Regarding Collateral.

(a) Holdings or the Borrower will furnish to the Administrative Agent promptly prior written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), or (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization.

(b) Not later than five days after delivery of financial statements pursuant to Section 5.01(a) (or such later date as agreed by the Administrative Agent (acting at the Direction of the Required Lenders)), Holdings or the Borrower shall deliver to the Administrative Agent a certificate executed by a Responsible Officer of Holdings or the Borrower (i) setting forth the information required pursuant to Schedules I through IV of the Collateral Agreement or confirming that there has been no change in such information since the Effective Date or the date of the most recent certificate delivered pursuant to this Section, (ii) identifying any wholly-owned Subsidiary that has become, or ceased to be, a Material Subsidiary during the most recently ended fiscal year and (iii) certifying that all notices required to be given prior to the date of such certificate by Section 5.03 or 5.11 have been given.

SECTION 5.04 Existence; Conduct of Business. Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, the patents, copyrights, trademarks, trade names and other Intellectual Property material to the conduct of its business, in each case (other than the preservation of the existence of Holdings and the Borrower) to the extent that the failure to do so could reasonably be expected to have a Material Adverse Effect, *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

SECTION 5.05 Payment of Taxes, etc. Holdings and the Borrower will, and will cause each Restricted Subsidiary to, pay its obligations in respect of Taxes before the same shall become delinquent or in default, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings or (ii) the failure to make payment could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 5.06 Maintenance of Properties. The Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.



SECTION 5.07     Insurance.

(a)     The Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment of the management of the Borrower) are reasonable and prudent in light of the size and nature of its business; and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. Each such policy of insurance maintained by a Loan Party shall (i) name the Administrative Agent, on behalf of the Lenders, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable/mortgagee clause or endorsement that names Administrative Agent, on behalf of the Lenders, as the loss payee/mortgagee thereunder.

(b)     If any portion of the improvements on any Mortgaged Property subject to FEMA rules and regulations is at any time located in an area identified by FEMA (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto, the “Flood Insurance Laws”), then the Borrower shall, or shall cause the relevant Loan Party to, (i) maintain or cause to be maintained, flood insurance sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance, which evidence complies with applicable Flood Insurance Laws and rules and regulations promulgated pursuant thereto.

SECTION 5.08     Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each Restricted Subsidiary to, maintain proper books of record and account in which entries that are full, true and correct in all material respects and are in conformity with GAAP (or applicable local standards) consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries, as the case may be. The Borrower will, and will cause the Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 5.08 and the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default, which visitation and inspection shall be at the reasonable expense of the Borrower; *provided further*, that (a) when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice and (b) the Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower’s independent public accountants.

SECTION 5.09     Compliance with Laws. The Borrower will, and will cause each Restricted Subsidiary to, comply with its Organizational Documents and all Requirements of Law with respect to it or its property (including, including without limitation, ERISA, applicable Environmental Laws and any foreign law, rules, regulations and orders of any Governmental Authority that relates to or governs



Foreign Pension Plans as well as the Patriot Act, the FCPA all other applicable anti-corruption laws and applicable Sanctions), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.10 Use of Proceeds. The Borrower will use the proceeds of the Loans, together with cash on hand of the Borrower and its Subsidiaries (i) to directly or indirectly finance a portion of the Transactions and (ii) for working capital and other general corporate purposes, including the financing of transactions that are not prohibited by the terms of this Agreement (including Investments).

SECTION 5.11 Additional Subsidiaries. If any additional Restricted Subsidiary or Intermediate Parent is formed or acquired after the Effective Date, Holdings or the Borrower will, on the same Business Day of such newly formed or acquired Restricted Subsidiary or Intermediate Parent is formed or acquired (unless such Subsidiary is an Excluded Subsidiary), notify the Administrative Agent thereof, and all actions (if any) required to be taken with respect to such newly formed or acquired Subsidiary or Intermediate Parent in order to satisfy the Collateral and Guarantee Requirement shall have been taken with respect to such Subsidiary or Intermediate Parent and with respect to any Equity Interest in or Indebtedness of such Subsidiary or Intermediate Parent owned by or on behalf of any Loan Party within 10 days thereof (or such longer period as the Administrative Agent shall reasonably agree).

SECTION 5.12 Further Assurances.

(a) Each of Holdings and the Borrower will, and will cause each Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) If, after the Effective Date, any Material Real Property is acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Security Document that become subject to the Lien created by such Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will forthwith notify the Administrative Agent thereof, and, if requested by the Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Secured Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent and consistent with the Collateral and Guarantee Requirement to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties and subject to last paragraph of the definition of the term “Collateral and Guarantee Requirement.”

SECTION 5.13 Ratings. Each of Holdings and the Borrower will use commercially reasonable efforts to cause (a) the Borrower to continuously have a public corporate credit rating from each of S&P and Moody’s within fifteen (15) days of the Effective Date (but not to maintain a specific rating) and (b) the credit facilities made available under this Agreement to be continuously rated by each of S&P and Moody’s (but not to maintain a specific rating) within fifteen (15) days of the Effective Date.

SECTION 5.14 Certain Post-Closing Obligations. Each of Holdings, the Borrower and each other Loan Party agrees that it will deliver, or will cause to be delivered, to the Administrative Agent the items described on Schedule 5.14 and complete, or cause to be completed, the actions described on Schedule 5.14, in each case, by the times specified on such Schedule 5.14 with respect thereto, or such later time as the Administrative Agent may agree (acting at the Direction of the Required Lenders). All



conditions precedent, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.14 within the time periods required by this Section 5.14), rather than as elsewhere provided in the Loan Documents).

SECTION 5.15     [Reserved].

SECTION 5.16     Change in Business. Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, reasonably related or ancillary to any of the foregoing.

SECTION 5.17     Changes in Fiscal Periods. The Borrower shall not make any change in its fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 5.18     Weekly Lender Calls. On Thursday of each week (commencing with May 11, 2023) (at 11:00 a.m. New York City time) (or such other day of any week or time agreed to as among the Required Lenders and the Borrower), management of the Borrower shall hold a weekly telephonic meeting with the Lenders, the Administrative Agent and its counsel and the Specified Lender Advisors to update the Lenders on financing results, operations, various business and legal matters, including status updates on key existing clients and key targets and vendors.

SECTION 5.19     Control Agreements.

(a)     No later than May 12, 2023 at 11:59 p.m. New York City time (as such deadline may be extended by the Administrative Agent (acting at the Direction of the Required Lenders)), the Borrower shall cause each Loan Party to enter into an Account Control Agreement, as applicable, and cause each of the Liens on deposit accounts and securities accounts owned by Loan Parties (other than Excluded Accounts) to be perfected by “control” as defined in the UCC.

(b)     Upon the establishment of any deposit account or securities account (other than an Excluded Account), the Borrower and the Loan Parties shall concurrently enter into an Account Control Agreement and cause each of the Liens on such deposit accounts and securities accounts to be perfected by “control” as defined in the UCC.

(c)     The Borrower shall manage all cash and Permitted Investments that are not in US bank accounts in accordance with the Approved Budget and consistent with past practices.

SECTION 5.20     Milestones. The Borrower shall, or shall cause, the actions and events set forth on Annex I to occur by the times and dates set forth therein, as any such time and date may be extended at the Direction of the Required Lenders; *provided* that where used in Annex I, any “delivery” required by this Section 5.20(a) shall require delivery to the Specified Lender Advisors (and all such deliveries are to be in form and substance satisfactory to the Required Lenders in their sole discretion), as well as to any other Person specified in Annex I attached hereto (each, a “Milestone” and collectively, the “Milestones”).

SECTION 5.21     Approved Budget.



(a) The use of Loans by the Loan Parties under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget (subject to Permitted Variances). The Approved Budget shall set forth, on a weekly basis, for the 13-week period covered thereby, the Budgeted Cash Receipts, Budgeted Disbursement Amounts, Budgeted Liquidity and Budgeted Borrower Professional Fees for the 13-week period commencing with the week that includes the Effective Date and shall be approved by, and be in form and substance reasonably satisfactory to, the Lenders party hereto (it being acknowledged and agreed that the form of Approved Budget set forth as Exhibit S hereto is approved by and reasonably satisfactory to such Lenders and is and shall be the Approved Budget unless and until replaced in accordance with terms of this Section 5.21; *provided*, that the Borrower shall provide an updated budget in form and substance acceptable to the Required Lenders two Business Days prior to any Withdrawal from the Loan Proceeds Account, and such updated budget shall be the Approved Budget unless and until replaced in accordance with the terms of this Section 5.21. The Approved Budget shall include a 13-week cash flow forecast, which shall (i) include line-item reporting, the nature and scope of which shall be satisfactory to the Required Lenders, (ii) otherwise be in form and substance satisfactory to, and subject to the approval of, the Required Lenders (or, with respect to the initial Approved Budget, all Lenders as of the Effective Date) (it being acknowledged and agreed that the form of the 13-week cash flow forecast provided by the Borrower to the Lenders prior to the Effective Date shall be deemed satisfactory), and (iii) update the 13-week cash flow forecast from the prior Approved Budget to add additional weeks to the forecast in order to present a 13-week forecast period.

(b) The Approved Budget shall be updated, modified or supplemented by the Borrower from time to time, including (i) on May 13, 2023, (ii) on May 25, 2023 and (iii) at the end of each four (4) consecutive week period commencing on May 25, 2023, and in the event that such updated, modified or supplemented budget is not in form and substance reasonably satisfactory to the Required Lenders in their sole discretion, and no such updated, modified or supplemented budget shall be effective if Required Lenders object in writing (which objection may be communicated by means of a Direction of the Required Lenders) within five days (or, in connection with a Withdrawal, two days) of receipt and if no written objection is received within five days (or, in connection with a Withdrawal, two days) of receipt, the updated, modified or supplemented budget shall be deemed an Approved Budget; *provided*, however, that in the event the Required Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall constitute an immediate Event of Default once the period covered by the prior Approved Budget has terminated (and at all times thereafter the then current Approved Budget shall remain in effect unless and until a new Approved Budget is not objected to by the Required Lenders (which objection may be communicated by means of a Direction of the Required Lenders)). Each Approved Budget delivered to the Administrative Agent and the Specified Lender Advisors shall be accompanied by such supporting documentation as reasonably requested by the Required Lenders. Each Approved Budget shall be prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time of preparation thereof.

(c) Commencing with the First Testing Period and for each Variance Testing Period thereafter, the Borrower shall not permit: (x) the Actual Cash Receipts to be less than Budgeted Cash Receipts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than 17.5% for such Variance Testing Period; and (y) Actual Disbursement Amounts (excluding Actual Borrower Professional Fees) to exceed the Budgeted Disbursement Amounts (excluding Budgeted Borrower Professional Fees) (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period (the “Permitted Variances”).

(d) The Borrower shall deliver to the Administrative Agent and the Lenders on or before 5:00 p.m. New York City time on the Thursday of each week commencing on May 11, 2023, a certificate which shall include such detail as is reasonably satisfactory to the Required Lenders, signed by



a Responsible Officer of the Borrower (1) certifying that (i) the Loan Parties are in compliance with the covenants contained in Section 5.21(a) and (ii) no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (2) attaching an Approved Budget Variance Report, which shall be prepared by the Borrower as of the last day of the respective Variance Testing Period then most recently ended.

(e) The Lenders (i) may assume that the Loan Parties will comply with the Approved Budget (subject to Permitted Variances), (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Loan Document or other lending limits set forth therein.

**SECTION 5.22 Specified Lender Advisors; Professional Services Firm.** The Lenders shall be entitled to retain or continue to retain (either directly or through counsel) any Specified Lender Advisor as the Required Lenders may deem necessary to provide advice, analysis and reporting for the benefit of the Lenders. The Loan Parties shall pay all reasonable fees, charges and disbursements of each Specified Lender Advisor and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall use commercially reasonable efforts to cooperate with the Specified Lender Advisors in connection with the services the Specified Lender Advisors provide to the Lenders, including to promptly furnish to the Specified Lender Advisors the ordinary course monthly financial materials provided to the Board of Directors of Holdings or the Borrower (excluding, for the avoidance of doubt, any such materials that would adversely affect any legal privilege or that relate to the Lenders, the Loan Documents or other material debt financing arrangements; *provided* that the Borrower will use reasonable efforts to deliver such information in a manner that would not adversely affect such legal privilege) (it being understood that none of the foregoing shall be construed to override any existing confidentiality and/or other obligations owed by the Loan Parties to such of its advisors or any other Person, including with respect to the sharing of any such information with third parties).

The Lenders shall be entitled to retain or continue to retain (either directly or through counsel) a professional services firm that is acceptable to the Required Lenders (which may be communicated by a Direction of the Required Lenders) to help analyze and negotiate the company's lease portfolio (such firm, the "PSF"). The Loan Parties shall pay all reasonable fees, charges and disbursements of PSF and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall use commercially reasonable efforts to cooperate with the PSF in connection with the services the PSF provides to the Lenders (it being understood that none of the foregoing shall be construed to override any existing confidentiality and/or other obligations owed by the Loan Parties to such of its advisors or any other Person, including with respect to the sharing of any such information with third parties).

**SECTION 5.23 Chief Restructuring Officer.** As soon as reasonably practicable following execution of this Agreement and in no event later than May 12, 2023, the Borrower shall appoint a Chief Restructuring Officer (a "CRO") acceptable to the Required Lenders (which may be communicated by a Direction of the Required Lenders), at the Company's sole cost and expense; *provided* that, for the avoidance of doubt, the Required Lenders hereby consent to the appointment of Eric Koza as the CRO. The terms, including the scope of the CRO's engagement shall be reasonably acceptable to the Direction



of the Required Lenders (which may be communicated by a Direction of the Required Lenders). The Borrower shall have such CRO engaged at all times while any of the Loan Document Obligations are outstanding.

## ARTICLE VI NEGATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable (other than contingent amounts not yet due) under any Loan Document have been paid in full, each of Holdings and the Borrower covenants and agrees with the Lenders that:

### SECTION 6.01     Indebtedness; Certain Equity Securities.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary or Intermediate Parent to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries under the Loan Documents;

(ii) Indebtedness (A) outstanding on the date hereof and listed on Schedule 6.01 and any Permitted Refinancing thereof and (B) that is intercompany Indebtedness outstanding on the date hereof and any Permitted Refinancing thereof; *provided* that any Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party must be unsecured and expressly subordinated to the Loan Document Obligations of such Loan Party on terms (A) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit H (reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders); or (B) otherwise reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders);

(iii) Guarantees by Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries in respect of Indebtedness of the Borrower or any Restricted Subsidiary otherwise permitted hereunder; *provided* that (A) such Guarantee is otherwise permitted by Section 6.04, (B) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Loan Document Obligations pursuant to the Guarantee Agreement, (C) if the Indebtedness being Guaranteed is subordinated to the Loan Document Obligations, such Guarantee shall be subordinated to the Guarantee of the Loan Document Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness, (D) no Subsidiary that is not a Loan Party may guarantee Indebtedness of a Loan Party pursuant to this clause (iii), and (E) no Loan Party may guarantee any Indebtedness of a Subsidiary that is not a Loan Party pursuant to this clause (iii);

(iv) Indebtedness of Holdings, any Intermediate Parent, the Borrower or of any Restricted Subsidiary owing to any other Restricted Subsidiary, the Borrower, Holdings or any Intermediate Parent to the extent permitted by Section 6.04; *provided* that all such Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Loan Document Obligations on terms (A) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit H or (B) otherwise reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders);



(v) (A) Indebtedness (including Capital Lease Obligations) of the Borrower or any of the Restricted Subsidiaries financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; *provided* that such Indebtedness is incurred concurrently with or within 180 days after the applicable acquisition, construction, repair, replacement or improvement, and (B) any Permitted Refinancing of any Indebtedness set forth in the immediately preceding clause (A); *provided further*, that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness, other than Capital Lease Obligations, that is outstanding in reliance on this clause (v) shall not exceed \$5,000,000;

(vi) Indebtedness in respect of (A) Swap Agreements entered into to hedge or mitigate risks to which Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary has actual exposure (other than those in respect of shares of capital stock or other Equity Interests of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary) and (B) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary, in each case, that is not entered into for speculative purposes;

(vii) (A) Indebtedness of any Person that becomes a Loan Party (or of any Person not previously a Loan Party that is merged or consolidated with or into the Borrower or other Loan Party) after the date hereof as a result of a Permitted Acquisition or other similar Investment permitted under Section 6.04, or Indebtedness of any Person that is assumed by the Borrower or any other Loan Party in connection with an acquisition of assets by the Borrower or such Loan Party in a Permitted Acquisition or other similar Investment permitted under Section 6.04, in each case, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (vi) shall not exceed \$5,000,000; *provided* that such Indebtedness is not incurred in contemplation of such Permitted Acquisition or other similar Investment;

(viii) Indebtedness in respect of the Permitted Receivables Financing;

(ix) Indebtedness representing deferred compensation to employees of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(x) Indebtedness consisting of unsecured promissory notes issued by any Loan Party to current or former officers, directors and employees or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests in Holdings (or any direct or indirect parent thereof) permitted by Section 6.08(a);

(xi) Indebtedness constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments (including “earn-outs”) incurred in a Permitted Acquisition, any other Investment or any Disposition, in each case permitted under this Agreement;

(xii) Indebtedness consisting of obligations under deferred compensation or other similar arrangements incurred in connection with the Transactions or any Permitted Acquisition or other similar Investment permitted hereunder;



(xiii) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements and Indebtedness arising from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xiv) Indebtedness of the Borrower and the Restricted Subsidiaries (which, for the avoidance of doubt, may be secured solely to the extent permitted by the provisions of Section 6.02); *provided* that at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xiv) shall not exceed \$5,000,000; *provided further*, that the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance on this clause (xiv) shall not exceed, at the time of incurrence thereof, \$2,000,000;

(xv) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xvi) (A) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created, or related to obligations or liabilities incurred, in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims and (B) Indebtedness of the Borrower or any of the Restricted Subsidiaries as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers or trade creditors issued in the ordinary course of business; *provided* that the aggregate principal amount of Indebtedness outstanding in reliance on this sub-clause (B) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, \$2,500,000;

(xvii) obligations in respect of performance, bid, appeal and surety bonds and performance, bankers' acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practice;

(xviii) Indebtedness under the Amended Existing Credit Agreement in an aggregate principal amount not to exceed \$966,440,624.97, as long as such Indebtedness is subordinated in right of payment pursuant to the Effective Date Intercreditor Agreement;

(xix) [reserved];

(xx) Indebtedness supported by a letter of credit or bank guaranty issued under the Amended Existing Credit Agreement or otherwise permitted to be issued thereunder to the extent the Borrower or any Restricted Subsidiary is the account party, in a principal amount not to exceed the face amount of such letter of credit;

(xxi) [reserved];

(xxii) [reserved];



(xxiii) [reserved];

(xxiv) [reserved];

(xxv) [reserved];

(xxvi) [reserved];

(xxvii) [reserved];

(xxviii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxvii) above.

(b) Holdings and each Intermediate Parent will not create, incur, assume or permit to exist any Indebtedness except Indebtedness created under subsections (i), (iii), (iv), (vi), (ix), (x), (xi), (xii), and (xiii) of this Section 6.01(a) and all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in the foregoing clauses.

(c) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, issue any preferred Equity Interests or any Disqualified Equity Interests, except in the case of Holdings, preferred Equity Interests that are Qualified Equity Interests.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (i) through (xxvii) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; *provided* that, notwithstanding anything to the contrary, Indebtedness incurred under the Amended Existing Credit Agreement shall be incurred pursuant to Section 6.01(a)(xviii) and may not be reclassified or divided.

**SECTION 6.02**     Liens. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(i) Liens created under the Loan Documents;

(ii) Permitted Encumbrances;

(iii) (A) Liens existing on Effective Date; *provided* that any Lien securing Indebtedness or other obligations shall only be permitted if set forth on Schedule 6.02, and any modifications, replacements, renewals or extensions thereof; *provided* that (1) such modified, replacement, renewal or extension Lien does not extend to any additional property other than (a) after-acquired property that is affixed or incorporated into the property covered by such Lien and (b) proceeds and products thereof, and (2) the obligations secured or benefited by such modified, replacement, renewal or extension Lien are permitted by Section 6.01, and (B) [reserved], *provided* that, in the case of this clause (B), such Liens shall be junior to the Liens securing the Secured Obligations pursuant to the Effective Date Intercreditor Agreement;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); *provided* that (A) such Liens attach concurrently with or within 180 days after the acquisition, repair,



replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, except for accessions to such property and the proceeds thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof, and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; *provided further*, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) leases, non-exclusive licenses, subleases, sublicenses or easement interests granted to others that do not (A) interfere in any material respect with the business of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, taken as a whole or (B) secure any Indebtedness;

(vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (B) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking industry;

(viii) Liens (A) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.04 to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition) or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) [reserved];

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Loan Party, Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Restricted Subsidiary that is not a Loan Party and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary, in each case after the date hereof (other than Liens on the Equity Interests of any Person that becomes a Restricted Subsidiary); *provided* that (A) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (B) such Lien does not extend to or cover any other assets or property (other than the proceeds thereof), and (C) the Indebtedness secured thereby is permitted under Section 6.01(a)(v) or (vii);

(xii) any interest or title of a lessor under leases (other than leases constituting Capital Lease Obligations), entered into by any of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;



(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by any of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term “Permitted Investments”;

(xv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xvi) Liens that are contractual rights of setoff (A) relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness, (B) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries or (C) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xvii) ground leases in the ordinary course of business in respect of real property on which facilities owned or leased by Borrower or any of its Restricted Subsidiaries are located;

(xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) [reserved];

(xx) other Liens; *provided* that at the time of incurrence of the obligations secured thereby (after giving Pro Forma Effect to any such obligations) the aggregate outstanding face amount of obligations secured by Liens existing in reliance on this clause (xx) shall not exceed \$5,000,000 and, if such Liens are secured by Collateral, such Liens shall be (i) junior in priority to the Liens securing the Secured Obligations (except, in each case, to the extent such Liens (x) secure Capital Leases or purchase money Indebtedness and extend only to assets acquired with the proceeds of such Indebtedness and proceeds and products thereof, replacements, accession or additions thereto and improvements thereon or (y) are senior to the Liens securing the Secured Obligations by operation of law);

(xxi) Liens on cash and Permitted Investments used to satisfy or discharge Indebtedness; *provided* such satisfaction or discharge is permitted hereunder;

(xxii) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxiii) Liens on cash or Permitted Investments securing Swap Agreements not entered into for speculative purposes in the ordinary course of business submitted for clearing in accordance with applicable Requirements of Law;

(xxiv) Liens on deposits taken by a Restricted Subsidiary that constitutes a regulated bank incurred in connection with the taking of such deposits; and



(xxv) Liens securing Indebtedness permitted under Section 6.01(a)(xviii); *provided* that such Liens shall be subject to the Effective Date Intercreditor Agreement.

For purposes of determining compliance with this Section 6.02, in the event that any Lien meets the criteria of more than one of the categories of Liens described in clauses (i) through (xxii) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such Lien (or any portion thereof) and will only be required to include the amount and type of such Lien in one or more of the above clauses; *provided* that, notwithstanding anything to the contrary, Liens securing the Amended Existing Credit Agreement shall be incurred pursuant to Section 6.02(xxv) and may not be reclassified or divided.

#### SECTION 6.03 Fundamental Changes.

(a) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that:

(i) any Restricted Subsidiary may merge with (A) the Borrower; *provided* that the Borrower shall be the continuing or surviving Person or (B) one or more other Restricted Subsidiaries; *provided* that when any Subsidiary Loan Party is merging or amalgamating with another Restricted Subsidiary either (1) the continuing or surviving Person shall be a Subsidiary Loan Party or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is permitted under Section 6.04;

(ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment must be an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for Fair Market Value and any promissory note or other non-cash consideration received in respect thereof is an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04;

(iv) the Borrower may merge, amalgamate or consolidate with any other Person; *provided* that the Borrower shall be the continuing or surviving Person;

(v) Holdings or any Intermediate Parent may merge, amalgamate or consolidate with any other Person (other than the Borrower), so long as no Event of Default exists after giving effect to such merger, amalgamation or consolidation; *provided* that (A) Holdings or Intermediate Parent, as applicable, shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not Holdings or Intermediate Parent, as applicable, or is a Person into which Holdings or Intermediate Parent, as applicable, has been liquidated (any such Person, the “Successor Holdings”), (1) the Successor Holdings shall expressly assume all the obligations of Holdings or Intermediate Parent, as



applicable, under this Agreement and the other Loan Documents to which Holdings or Intermediate Parent, as applicable, is a party pursuant to a supplement hereto or thereto in form and substance reasonably satisfactory to the Administrative Agent, (2) each Loan Party other than Holdings or Intermediate Parent, as applicable, unless it is the other party to such merger, amalgamation or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Holdings' obligations under this Agreement, (3) the Successor Holdings shall, immediately following such merger, amalgamation or consolidation, directly or indirectly own all Subsidiaries owned by Holdings or Intermediate Parent, as applicable, immediately prior to such transaction, (4) Holdings or Intermediate Parent, as applicable, shall have delivered to the Administrative Agent a certificate of a Responsible Officer and an opinion of counsel, each stating that such merger or consolidation complies with this Agreement and (5) [reserved]; *provided further*, that if the foregoing requirements are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings or Intermediate Parent, as applicable, under this Agreement and the other Loan Documents; *provided further*, that the Borrower agree to provide any documentation and other information about the Successor Holdings as shall have been reasonably requested in writing by any the Lender through the Administrative Agent that such Lender shall have reasonably determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including Title III of the USA Patriot Act;

(vi) any Restricted Subsidiary may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12

(vii) any Restricted Subsidiary may effect a merger, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05; and

(viii) [reserved].

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made;

(b) loans or advances to officers, directors and employees of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, in each case, in accordance with the Approved Budget, (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests in Holdings (or any direct or indirect parent thereof) (*provided* that the amount of such loans and advances made in cash to such Person shall be contributed to the Borrower in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii); *provided* that at the time of incurrence thereof and after giving Pro Forma Effect thereto the aggregate principal amount outstanding in reliance on clause (i) and clause (iii) above shall not to exceed \$1,000,000 in the aggregate at any time outstanding;

(c) Investments by Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary in any of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary; *provided* that, in the case of any Investment by a Loan Party in a Restricted Subsidiary that is not a Loan



Party, no Event of Default shall have occurred and be continuing or would result therefrom and shall not in the aggregate at any time outstanding exceed \$5,000,000 and shall be made solely using cash or Permitted Investments in the ordinary course of business consistent with past practice;

(d) Investments consisting of prepayments to suppliers in the ordinary course of business;

(e) Investments consisting of extensions of trade credit in the ordinary course of business;

(f) Investments (i) existing on the date hereof and set forth on Schedule 6.04(f) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) Investments existing on the date hereof by Holdings, the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; *provided* that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04(f) or as otherwise permitted by this Section 6.04;

(g) Investments in Swap Agreements not entered into for speculative purposes permitted under Section 6.01;

(h) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;

(i) Permitted Acquisitions in an aggregate amount not to exceed \$25,000,000 during the term of this Agreement;

(j) [reserved];

(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, from financially troubled account debtors or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances by Holdings, the Borrower or any Restricted Subsidiary to any direct or indirect parent of Holdings in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made by Holdings to such parent in accordance with Section 6.08(a); *provided* that, any such loans and advances will be deemed to reduce the relevant available capacity under the applicable sub-section of Section 6.08(a);

(n) [reserved];

(o) other Investments; *provided* that at the time any such Investment is made, the aggregate outstanding amount of all Investments made in reliance on this clause (n) together with the aggregate amount of all consideration paid in connection with all other Investments made in reliance on this clause (n) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other acquisition), shall not exceed \$5,000,000; *provided further* that this clause (n) may not be used for Investments in Subsidiaries of Holdings that are not Loan Parties;



(p) [reserved];

(q) advances of payroll payments to employees in the ordinary course of business;

(r) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests of Holdings (or any direct or indirect parent thereof or the IPO Entity) in each case, to the extent not resulting in a Change of Control; *provided* that (i) [reserved] and (ii) any amounts used for such an Investment or other acquisition that are not Qualified Equity Interests of Holdings (or any direct or indirect parent thereof or the IPO Entity) shall otherwise be permitted pursuant to this Section 6.04;

(s) Investments of a Subsidiary acquired after the Effective Date or of a Person merged or consolidated with any Subsidiary in accordance with this Section and Section 6.03 after the Effective Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(t) [reserved];

(u) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions, Restricted Payments and Restricted Debt Payments permitted (other than by reference to this Section 6.04)) under Sections 6.02, 6.01, 6.03, 6.05, 6.08(a) and 6.08(b), respectively;

(v) [reserved];

(w) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower;

(x) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case, in the ordinary course of business;

(y) [reserved]; and

(z) Investments in Subsidiaries in the form of receivables and related assets required in connection with a Permitted Receivables Financing (including the contribution or lending of cash and cash equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or other Restricted Subsidiaries or to otherwise fund required reserves).

For purposes of determining compliance with this Section 6.04, with respect to any Investment initially made in reliance on a dollar-based criteria described in clauses (a) through (y) above in any Person that is not a Restricted Subsidiary at the time of, or after giving effect to, the making of such Investment, the Borrower may, in its sole discretion, reclassify such Investment (or any portion thereof) to clause (i) of this Section 6.04 upon such Person becoming a Restricted Subsidiary.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, Holdings, the Borrower, and each Subsidiary and any Intermediate Parent will comply with the Material Intellectual Property Provision.



Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, for purposes of this Section 6.04, the Foreign Guarantors will be deemed to be Subsidiaries of the Borrower that are not Loan Parties.

SECTION 6.05 Asset Sales. (a) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent, to, (i) sell, transfer, lease, license or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors' qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing Equity Interests to Holdings, the Borrower or a Restricted Subsidiary in compliance with Section 6.04(c)) (each, a "Disposition"), except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property that is no longer used or useful, or economically practicable to maintain, in the conduct of the business of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned);

(b) Dispositions of inventory and other assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or a Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for Fair Market Value and any promissory note or other non-cash consideration received in respect thereof is an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04;

(e) Dispositions permitted by Section 6.03, Investments permitted by Section 6.04 (other than Section 6.04(u)), Restricted Payments permitted by Section 6.08(a), Restricted Debt Payments permitted by Section 6.08(b) and Liens permitted by Section 6.02, in each case, other than by reference to this Section 6.05;

(f) [reserved];

(g) Dispositions of Permitted Investments in the ordinary course of business;

(h) Dispositions of (A) accounts receivable in the ordinary course of business in connection with the collection or compromise thereof (excluding sales to factors or other third parties) and (B) accounts receivables and related assets pursuant to any Permitted Receivables Financing;

(i) leases, subleases, non-exclusive licenses or sublicenses, in each case, in the ordinary course of business and that, individually or in the aggregate, do not materially interfere with the business of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries;



(j) Dispositions of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event;

(k) Dispositions of property to Persons other than Holdings, the Borrower or any of the Restricted Subsidiaries (including the sale or issuance of Equity Interests in a Restricted Subsidiary) not otherwise permitted under this Section 6.05 in an aggregate principal amount not to exceed \$10,000,000 in any fiscal year; *provided* that (i) such Disposition is made for Fair Market Value and (ii) the Borrower or a Restricted Subsidiary shall receive not less than 90% of such consideration in the form of cash or Permitted Investments;

(l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) Dispositions of any assets (including Equity Interests) (i) acquired in connection with any Permitted Acquisition or other similar Investment permitted hereunder, which assets are not used or useful to the core or principal business of the Borrower and the Restricted Subsidiaries and (ii) made to obtain the approval of any applicable antitrust authority in connection with a Permitted Acquisition or other similar Investment permitted hereunder;

(n) transfers of condemned property as a result of the exercise of “*eminent domain*” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(o) [reserved]; and

(p) [reserved].

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, Holdings, the Borrower, and each Subsidiary and any Intermediate Parent will comply with the Material Intellectual Property Provision.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, for purposes of this Section 6.05, the Foreign Guarantors will be deemed to be Subsidiaries of the Borrower that are not Loan Parties.

**SECTION 6.06**     **Holdings Covenant.** Holdings and any Intermediate Parent will not conduct, transact or otherwise engage in any business or operations, or own any Equity Interests of any Person, other than (i) the ownership and/or acquisition of the Equity Interests of the Borrower and any Intermediate Parent, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and/or the Borrower, (iv) the performance of its obligations under and in connection with the Loan Documents, any documentation governing any Indebtedness or Guarantee permitted to be incurred or made by it under Article VI, the Transactions and the other agreements contemplated hereby and thereby, (v) any public offering of its common stock or any other issuance or registration of its (or its direct or indirect parent’s) Equity Interests for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, including the formation of one or more “*shell*” companies to facilitate any such offering or issuance, (vi) any transaction that Holdings or any Intermediate Parent is permitted to enter into or consummate under



Article VI (including, but not limited to, the making of any Restricted Payment permitted by Section 6.08 or holding of any cash or Permitted Investments received in connection with Restricted Payments made in accordance with Section 6.08 pending application thereof in the manner contemplated by Section 6.04, the incurrence or payment of any Indebtedness permitted to be incurred by it under Section 6.01 or not prohibited to be paid by it under Section 6.08(b) and, subject to the limitations set forth in the preceding clause (i), the making of any Investment in any Intermediate Parent, the Borrower or any of its Subsidiaries permitted to be made by it under Section 6.04), (vii) incurring reasonable and customary documented fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (viii) providing indemnification as permitted in Section 6.09, (ix) activities incidental to the consummation of the Transactions and (x) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

**SECTION 6.07      Negative Pledge.** Holdings and the Borrower will not, and will not permit any Restricted Subsidiary or Intermediate Parent to enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; *provided* that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (i) Requirements of Law, (ii) any Loan Document, (iii) any documentation governing any Permitted Receivables Financing entered into in the ordinary course, (iv) any documentation governing the Amended Existing Credit Agreement, (iv) [reserved], (v) [reserved], (vi) [reserved], (vii) [reserved] and (viii) any documentation governing any Permitted Refinancing incurred to refinance any such Indebtedness referenced in clauses (i) through (vii) above; *provided* that with respect to Indebtedness referenced in (A) clauses (v) and (vii) above, such restrictions shall be no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and (B) clause (vi) or clause (viii) above, such restrictions shall not expand the scope in any material respect of any such restriction or condition contained in the Indebtedness being Refinanced;

(b) customary restrictions and conditions existing on the Effective Date set forth on Schedule 6.07 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; *provided* that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses and other contracts restricting the assignment thereof;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing by such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); *provided* that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any Restricted Subsidiary;



(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) [reserved];

(j) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted by Section 6.02 and applicable solely to such joint venture and entered into in the ordinary course of business; and

(k) customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

**SECTION 6.08      Restricted Payments; Certain Payments of Indebtedness.**

(a) Neither Holdings nor the Borrower will, nor will they permit any Intermediate Parent or Restricted Subsidiary to pay or make, directly or indirectly, any Restricted Payment, except:

(i) (A) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other wholly-owned Subsidiary of the Borrower that is a Loan Party and (B) each Restricted Subsidiary that is not a Loan Party may make Restricted Payments to any other wholly-owned Restricted Subsidiary that is not a Loan Party in the ordinary course of business and consistent with past practice;

(ii) [reserved];

(iii) Holdings may declare and make dividend payments or other distributions payable solely in the Equity Interests of Holdings;

(iv) [reserved];

(v) repurchases of Equity Interests in Holdings (or Restricted Payments by Holdings to allow repurchases of Equity Interest in any direct or indirect parent of Holdings) deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such stock options or warrants;

(vi) Restricted Payments made by Holdings to redeem, acquire, retire or repurchase its Equity Interests (or any options, warrants, restricted stock units or stock appreciation rights issued with respect to any of such Equity Interests) (or make Restricted Payments to allow any of Holdings' direct or indirect parent companies to so redeem, retire, acquire or repurchase their Equity Interests) held by future, current or former officers, managers, consultants, directors and employees (or their respective affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees) of Holdings (or



any direct or indirect parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement; *provided* that the aggregate amount of Restricted Payments permitted by this clause (vi) after the Effective Date, together with the aggregate amount of loans and advances by Holdings, the Borrower or any Restricted Subsidiary to any parent of Holdings made pursuant to Section 6.04(m) in lieu thereof, shall not exceed (A) \$2,000,000 for the most recently ended Test Period after giving Pro Forma Effect to the making of such Restricted Payment in any fiscal year of the Borrower and (B) the amount in any fiscal year equal to the cash proceeds of key man life insurance policies received by the Borrower or the Restricted Subsidiaries after the Effective Date; *provided* that any unused portion of the preceding basket calculated pursuant to clauses (A) and (B) above for any fiscal year may be carried forward to the next two succeeding fiscal years but in any event not to exceed an aggregate of \$5,000,000 in any fiscal year;

(vii) Holdings may make Restricted Payments in cash:

(A) to allow any direct or indirect parent of Holdings to pay, for any taxable period for which Holdings and/or any of its Subsidiaries are members of a consolidated, combined or unitary tax group for U.S. federal and/or applicable state, local or foreign income Tax (or any similar Tax imposed in lieu of an income tax) for the purposes of which a direct or indirect parent of Holdings is the common parent or applicable taxpayer (a "Tax Group"), the portion of any U.S. federal, state, local or foreign Taxes (as applicable) of such Tax Group for such taxable period that is attributable to Holdings and/or its Subsidiaries or such parent's or applicable taxpayer's ownership of Holdings and/or its Subsidiaries (net of any payments already made by Holdings and its Subsidiaries); *provided* that Restricted Payments made pursuant to this clause (a)(vii)(A) shall not exceed the Tax liability that Holdings and/or its Subsidiaries (as applicable) would have incurred were such Taxes determined as if such entity(ies) were a standalone taxpayer or a stand-alone group;

(B) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including travel, administrative, legal, accounting, audit and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership of Holdings and its Subsidiaries, (2) any reasonable and customary indemnification claims made by directors or officers of any direct or indirect parent of Holdings attributable to the ownership or operations of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, (3) fees and expenses (x) due and payable by any of the Borrower and the Restricted Subsidiaries and (y) otherwise permitted to be paid by the Borrower and the Restricted Subsidiaries under this Agreement, (4) payments that would otherwise be permitted to be paid directly by the Borrower or the Restricted Subsidiaries pursuant to Section 6.09(iii) or (5) subject to there being no continuing Event of Default, (I) payments that would otherwise be permitted to be paid directly by Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries pursuant to Section 6.09(x) or (II) to the extent permitted by Section 6.09, other customary advisory, refinancing, subsequent transaction and exit fees and franchise, registration or similar Taxes payable by any direct or indirect parent of Holdings that are attributable to the ownership of Holdings and its Subsidiaries, in each case, in accordance with the Approved Budget;



(C) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate existence;

(D) [reserved];

(E) the proceeds of which shall be used by any direct or indirect parent of Holdings to make payments of the type permitted by Section 6.08(a)(vi);

(F) [reserved];

(G) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries, in each case, in accordance with the Approved Budget; and

(H) [reserved];

(viii) [reserved];

(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; *provided* that such new Equity Interests contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(x) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options and the vesting of restricted stock and restricted stock units;

(xi) Holdings may (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition (or other similar Investment) and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(xii) [reserved;]

(xiii) payments made or expected to be made by Holdings (or any parent thereof) in respect of withholding or similar taxes payable upon exercise of Equity Interests of Holdings (or such parent) by any future, present or former employee, director, officer, manager or consultant of Holdings, any Intermediate Parent, the Borrower or any of its Restricted Subsidiaries (or their respective controlled Affiliates or Immediate Family Members) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests of Holdings (or such parent) represent a portion of the exercise price of such options or warrants or required withholding or similar taxes;

(xiv) [reserved]; and



(xv) [reserved];

(b) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary to make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other assets or property) of or in respect of principal of or interest on any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Junior Financing (the foregoing, “Restricted Debt Payments”), except:

(i) payment of regularly scheduled interest and principal payments (including any required AHYDO catch-up payment) as, in the form of payment and when due in respect of any Indebtedness, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

(ii) refinancings of Indebtedness with proceeds of a Junior Financing, or, other than in the case of Indebtedness subordinated in right of payment to the Loan Documents, unsecured Indebtedness, in each case, permitted to be incurred under Section 6.01;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parent companies or any Intermediate Parent;

(iv) [reserved]; and

(v) [reserved].

(c) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, amend or modify any documentation governing any Junior Financing, in each case

(i) if the effect of such amendment or modification (when taken as a whole):

(A) is materially adverse to the Lenders in their capacity as such;

(B) more disadvantageous to the Lenders than the relevant transaction in existence on the Effective Date;

(C) increases the amount of cash pay interest with respect thereto (including (x) pursuant to increases in the interest rate, increases to applicable floors, or increases to credit spread adjustments, (y) through payment of cash fees or (z) through modification of any tests required to be satisfied in order to require the payment of cash interest); *provided* that, for the avoidance of doubt, this clause (iii) shall not apply with regard to any payment-in-kind interest;

(D) causes such indebtedness to mature earlier than (or have a Weighted Average Life to Maturity earlier than) the Loans;

(E) adds, increases the amount, or increases the frequency of any amortization schedule or mandatory prepayments;

(F) adds any covenant, condition, default, event of default, or any other term that is materially adverse to the Borrower relative to such terms as of the Effective Date (including any



restrictions on paying the Loans or otherwise performing its obligations under this Agreement); or

(G) adds any guarantor or collateral that is not a Guarantor or Collateral, as applicable, under the Loan Documents.

(ii) in violation of any Intercreditor Agreement, or any intercreditor agreement related to such debt entered into with the Administrative Agent and/or changes the subordination terms set forth in the definitive documentation governing any Junior Financing.

**SECTION 6.09** Transactions with Affiliates. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(i) transactions with Holdings, the Borrower, any Intermediate Parent or any Restricted Subsidiary in the ordinary course of business;

(ii) on terms substantially as favorable to Holdings, the Borrower, such Intermediate Parent or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate;

(iii) the Transactions and the payment of fees and expenses related to the Transactions;

(iv) issuances of Equity Interests of Holdings, any Intermediate Parent or the Borrower to the extent otherwise permitted by this Agreement;

(v) employment and severance arrangements between Holdings, the Borrower, any Intermediate Parent and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Sections 6.04(b) and 6.04(p));

(vi) reasonable payments by Holdings (and any direct or indirect parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings (and any such parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of any Intermediate Parent, the Borrower and the Restricted Subsidiaries, to the extent payments are permitted by Section 6.08;

(vii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of Holdings (or any direct or indirect parent company thereof), the Borrower, any Intermediate Parent and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries;

(viii) transactions pursuant to permitted agreements in existence the Effective Date and set forth on Schedule 6.09 or any amendment thereto to the extent such an amendment is not adverse to the Lenders;



(ix) Restricted Payments and Restricted Debt Payments permitted under Section 6.08 (other than Section 6.08(a)(vii)(B)(4) or (5));

(x) customary agreements (including related indemnities and expense reimbursements) by Holdings, any Intermediate Parent, the Borrower and any of the Restricted Subsidiaries with the Sponsor made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions, divestitures or financings), which agreements are approved by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of such Person in good faith (including the agreements with respect to management and monitoring fees to certain of the Sponsor (or management companies of the Sponsor) in amounts contemplated by that certain services agreement as in effect on of the Effective Date); *provided* that, notwithstanding the foregoing, no such fees described in this clause (x) shall be paid to the Sponsor (or any management companies of the Sponsor) pursuant to this clause (x) or otherwise during the term of this Agreement, but such fees may continue to accrue; and

(xi) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any Affiliate of any of the foregoing) of the Borrower, any of the Subsidiaries or any direct or indirect parent thereof.

SECTION 6.10 Limitation on Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc. Amend or modify in any manner, the articles or certificate of incorporation or by-laws of the Borrower that is, or would reasonably be expect to be adverse to the Lenders.

SECTION 6.11 Minimum Liquidity. Permit Actual Liquidity as of the last Friday of any calendar week (or, if such day is not a Business Day, the immediately preceding Business Day) to be less than \$7,500,000 (the “Minimum Liquidity Covenant”).

## ARTICLE VII EVENTS OF DEFAULT

SECTION 7.01 Events of Default. If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan when and as the same shall become due and payable hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Section) payable under any Loan Document, when and as the same shall become due and payable hereunder, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall be untrue or incorrect in any material respect when made or deemed made;



(d) Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02(a), 5.04 (with respect to the existence of Holdings, any Intermediate Parent or the Borrower), 5.10, 5.14, 5.19, 5.20, 5.21, 5.23 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section), and such failure (if curable) shall continue unremedied for a period of 30 days;

(f) Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal, interest or otherwise and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace period) other than with the prior written consent of the Required Lenders, which may be communicated by means of a Direction of the Required Lenders;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (other than with the prior written consent of the Required Lenders, which may be communicated by means of a Direction of the Required Lenders), *provided* that this paragraph (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement) or (ii) termination events or similar events occurring under any Swap Agreement that constitutes Material Indebtedness (it being understood that paragraph (f) of this Section will apply to any failure to make any payment required as a result of any such termination or similar event);

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, court protection, reorganization or other relief in respect of Holdings, any Intermediate Parent, the Borrower or any Material Subsidiary or its debts, or of a material part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, examiner, sequestrator, conservator or similar official for Holdings, any Intermediate Parent, the Borrower or any Material Subsidiary or for a material part of its assets, and, in any such case, such proceeding or petition shall continue undismissed or unstayed for 60 days, or an order or decree approving or ordering any of the foregoing shall be entered (collectively, an “Involuntary Bankruptcy Action”);

(i) Holdings, any Intermediate Parent, the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, court protection, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, examiner, custodian, sequestrator, conservator or similar official for Holdings, any Intermediate Parent, the Borrower or any Material Subsidiary or for a material part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding or (v) make a general assignment for the benefit of creditors (collectively, the “Other Bankruptcy Actions”);



(j) one or more enforceable judgments for the payment of money in an aggregate amount in excess of \$5,000,000 (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not denied its obligation) shall be rendered against Holdings, any Intermediate Parent, the Borrower, any of the Restricted Subsidiaries or any combination thereof, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any judgment creditor shall legally attach or levy upon assets of such Loan Party that are material to the businesses and operations of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, taken as a whole, to enforce any such judgment;

(k) (i) an ERISA Event or Foreign Plan Event occurs that has resulted or could reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, except, in each case, as could not, reasonably be expected to result in a Material Adverse Effect;

(l) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, except (i) as a result of the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, (ii) as a result of the Administrative Agent's failure to (A) maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Security Documents or (B) file Uniform Commercial Code continuation statements, (iii) as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (iv) as a result of acts or omissions of the Administrative Agent or any Lender;

(m) any provision of any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;

(n) any Guarantees of the Loan Document Obligations by Holdings, any Intermediate Parent, the Borrower or Subsidiary Loan Party pursuant to the Guarantee Agreement shall cease to be in full force and effect (in each case, other than in accordance with the terms of the Loan Documents);

(o) a Change of Control shall occur;

(p) any RSA Termination Event or termination of the RSA (other than due solely to a breach of the RSA by Lenders constituting Required Lenders); or

(q) any "Event of Default" occurs under Amended Existing Credit Agreement as such term is defined therein;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other



obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

SECTION 7.02 Application of Proceeds. After the exercise of remedies provided for in Section 7.01, any amounts received on account of the Secured Obligations, shall be applied, subject to the provisions of any applicable Intercreditor Agreements, by the Administrative Agent as follows:

(a) First, to the payment of all reasonable costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith, pro rata until the same has been prepaid in full;

(b) Second, to the payment of all other reasonable costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, pro rata until the same has been prepaid in full;

(c) Third, to interest then due and payable on the Loans and any fees, premiums and scheduled periodic payments due under Secured Cash Management Obligations and Secured Swap Obligations, pro rata until the same has been prepaid in full;

(d) Fourth, to the principal balance of the Loans outstanding and any breakage, termination or other payments

under Secured Cash Management Obligations and Secured Swap Obligations, pro rata, until the same has been prepaid in full;

(e) Fifth, to all other Secured Obligations pro rata until the same has been prepaid in full;

and

(f) Sixth, the balance, if any, as required by the Intercreditor Agreement(s) or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

Amounts distributed with respect to any Secured Cash Management Obligations shall be the lesser of the maximum Secured Bank Product Obligations under the applicable Facility last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Cash Management Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.



In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Fifth of this Section 7.02(a), the Loan Parties shall remain liable for any deficiency. Notwithstanding the foregoing provisions, this Section 7.02 is subject to the provisions of the Intercreditor Agreements.

Notwithstanding the foregoing, Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth in Section 4.02 of the Collateral Agreement and/or the similar provisions in the other Security Documents.

SECTION 7.03      [Reserved].

## ARTICLE VIII THE ADMINISTRATIVE AGENT; ESCROW AGENT; SECURITY TRUSTEE

SECTION 8.01      Administrative Agent.

(a) Each of the Lenders hereby irrevocably appoints Wilmington Savings Fund Society, FSB to serve as Administrative Agent, collateral agent and trustee under the Loan Documents, and authorizes the Administrative Agent to take such actions and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Further, the Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a Person to whom any Secured Cash Management Obligations are owed or a counterparty to any Swap Agreement the obligations under which constitute Secured Swap Obligations) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Loan Document Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents, trustees and attorneys-in-fact appointed by the Administrative Agent pursuant to this Section 8.01 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the Direction of the Required Lenders), shall be entitled to the benefits of all provisions of this Article VIII (including paragraph 13 hereof) and Article IX (as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the other Secured Parties, and none of Holdings, the Borrower or any other Loan Party shall have any rights as a third party beneficiary of any such provisions.

(b) The Person serving as the Administrative Agent hereunder shall be permitted to generally engage in any kind of business with Holdings, the Borrower or any other Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

(c) The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or to exercise any discretionary power, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in



writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in the Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings, the Borrower, any other Subsidiary or any other Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Holdings, the Borrower, a Lender and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent.

(d) The Administrative Agent shall be entitled to rely, and shall not incur any liability for relying, upon any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person (including, if applicable, a Responsible Officer or Financial Officer of such Person). The Administrative Agent also may rely, and shall not incur any liability for relying, upon any statement made to it orally or by telephone and believed by it to be made by the proper Person (including, if applicable, a Financial Officer or a Responsible Officer of such Person). The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(e) The Administrative Agent may perform any of and all its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of and all their duties and exercise their rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

(f) Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign upon 30 days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (unless an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an



Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent, which shall be (a) an Approved Bank with an office in New York, New York, or an Affiliate of any such Approved Bank and (b) approved by the Borrower (unless an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing) (the date upon which the retiring Administrative Agent is replaced, the “Resignation Effective Date”); *provided*, that if no such successor shall have been appointed (and shall have accepted such appointment) within 45 days after the retiring Administrative Agent gives notice of its resignation, such resignation shall nevertheless become effective, and the Resignation Effective Date shall occur on such date. If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent that has accepted such appointment, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent.

(g) If the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders and the Borrower may, to the extent permitted by applicable law, by notice in writing to such Person remove such Person as Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(h) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and (ii) with respect to any outstanding payment obligations) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(i) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender, or any of the Related Parties of any of the foregoing, or any of the financial advisors of the Loan Parties, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Lender,



or any of the Related Parties of any of the foregoing, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(j) Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

(k) No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.

(l) Notwithstanding anything herein to the contrary, each Person named on the cover page of this Agreement shall have the benefit of the indemnities provided for hereunder, including under Section 9.03, fully as if named as an indemnitee or indemnified person therein and irrespective of whether the indemnified losses, claims, damages, liabilities and/or related expenses arise out of, in connection with or as a result of matters arising prior to, on or after the effective date of any Loan Document.

(m) To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. Without limiting or expanding the provisions of Section 2.15, each Lender shall, and does hereby, indemnify the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the U.S. Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this paragraph. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other obligations under any Loan Document.



(n) Each Secured Party hereby appoints the Administrative Agent to act as its agent under and in connection with the relevant Security Documents and acknowledges that the Administrative Agent is the beneficiary of the security interests granted thereunder and the Administrative Agent will accept such grants of security interests under the relevant Security Documents on its behalf and will enter into the relevant Security Documents as secured party, lienholder or pledgee in its own name.

SECTION 8.02     Escrow Agent.

(a) Each of the Lenders (and the other Secured Parties by their acceptance of the benefits under the Loan Documents) irrevocably designates and appoints the Escrow Agent as its agent under this Agreement and the other Loan Documents with and irrevocably authorizes the Escrow Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Escrow Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Escrow Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender (or other Secured Party), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Escrow Agent.

(b) For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, the Escrow Agreement, or any additional document, instrument, certificate and/or agreement related to any of the foregoing, each of the Parties and Escrow Agent acknowledge and agree that in no event shall any Deposit Property (as such term is defined in the Escrow Agreement) or other property, proceeds, cash, cash equivalents, or otherwise placed or held, in each case, in the Loan Proceeds Account at any time be, or be deemed to be, property of any of the Borrower or its affiliates or subsidiaries or any of their respective bankruptcy estates.

SECTION 8.03     Collateral Agent as Security Trustee of UK Collateral Documents. For the purposes of any Liens created under a UK Collateral Document, the following additional provisions shall apply, in addition to the provisions set out above or otherwise hereunder:

(a) In this Section, the following expressions have the following meanings:

“Charged Property” means the assets of any of the Loan Parties which from time to time are, or are expressed to be, the subject to a security interest under a UK Collateral Document.

(b) Each Lender appoints the Collateral Agent to hold the security interests constituted by the UK Collateral Document on trust for the Lenders on the terms of the Loan Documents and the Collateral Agent accepts that appointment.

(c) Each Lender confirms its approval of the UK Collateral Documents and authorizes and instructs the Collateral Agent: (i) to execute and deliver the UK Collateral Documents; (ii) to exercise the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions given to the Collateral Agent (in its capacity as security trustee) under or in connection with the UK Collateral Documents together with any other incidental rights, powers, authorities and discretions; and (iii) to give any authorizations and confirmations to be given by the Collateral Agent (in its capacity as security trustee) on behalf of the Lenders under the UK Collateral Documents.

(d) Each Lender confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by a UK Collateral Document and accordingly authorizes: (a) the Collateral



Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (b) the U.K. Land Registry (or other relevant registry) to register the Collateral Agent as a sole proprietor of such security interest.

(e) Section 1 of the Trustee Act 2000 (U.K.) shall not apply to the duty of the Collateral Agent in relation to the trusts constituted by this Agreement.

(f) In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1925 (U.K.) or the Trustee Act 2000 (U.K.), the provisions of this Agreement shall prevail to the extent allowed by law, and shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000 (U.K.).

## ARTICLE IX MISCELLANEOUS

SECTION 9.01 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, e-mail or other electronic transmission, as follows:

(a) If to Holdings or the Borrower, to:

Cyxtera DC Holdings, Inc.  
2333 Ponce de Leon Blvd, Suite 900  
Coral Gables, FL USA 33134  
Attn: Carlos Sagasta and Victor Semah  
Phone (305) 375-6000  
Email: carlos.sagasta@cyxtera.com and victor.semah@cyxtera.com

With copies to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Joshua N. Korff, P.C. and Ben Steadman  
Email: joshua.korff@kirkland.com and ben.steadman@kirkland.com

(b) If to the Administrative Agent, to:

WSFS Institutional Services  
500 Delaware Ave  
Wilmington, DE USA 19801  
Attn: John McNichol  
Phone (302) 573-3269  
Email: jmcnichol@wsfsbank.com

and

With copies to:

ArentFox Schiff LLP  
1301 Avenue of the Americas  
New York, NY 10019  
Attention: Jeffrey Gleit  
Email: Jeffrey.Gleit@afslaw.com



(c) If to the Escrow Agent, to:

The Bank of New York Mellon  
500 Ross Street, 12th Floor  
Pittsburgh, PA 15262  
Attention: Alicia Strobe  
Tel: (412) 234-0295  
Email: alicia.c.strobe@bnymellon.com

and

With copies to:

Bryan Cave Leighton Paisner LLP  
1290 Avenue of the Americas  
New York, NY 10104  
Attention: Jeremy Finkelstein  
Tel: (212) 541-3071  
Email: Jeremy.finkelstein@bclplaw.com

(d) if to any other Lender, to it at its address (or fax number or email address) set forth in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax or other electronic transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient).

Holdings and the Borrower may change their address, email or facsimile number for notices and other communications hereunder by notice to the Administrative Agent, the Administrative Agent may change its address, email or facsimile number for notices and other communications hereunder by notice to Holdings and the Borrower and the Lenders may change their address, email or facsimile number for notices and other communications hereunder by notice to the Administrative Agent. Notices and other communications to the Lenders hereunder may also be delivered or furnished by electronic transmission (including email and Internet or intranet websites) pursuant to procedures reasonably approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic transmission.

Notwithstanding anything herein or in any other Loan Document providing for the delivery of any Approved Electronic Communication by any other means, the Loan Parties shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent to jmcnichol@wsfsbank.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify to the Borrower (which notice shall be effective upon acknowledgement of receipt thereof by the Borrower). Nothing in this paragraph shall prejudice the right of the Administrative Agent or any Lender Party to deliver any Approved Electronic Communication to any Loan Party in any manner authorized in this Agreement or to request that the Borrower effect delivery in such manner.



Each of the Lenders and each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lender Parties by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”). Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lender Parties and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lender Parties and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

#### SECTION 9.02      Waivers; Amendments.

(a) No failure or delay by any of the Agents or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.12, neither any Loan Document nor any provision thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent (to the extent that such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Administrative Agent under this Agreement, the Administrative Agent shall execute such waiver, amendment or other modification to the extent approved by the Required Lenders) and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders, *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness in principal) or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby (it being understood that any change to the definition of First Lien Leverage Ratio or in the



component definitions thereof shall not constitute a reduction of interest or fees), *provided* that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay default interest pursuant to Section 2.11(c), (iii) postpone the maturity of any Loan (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity date), or the date of any scheduled amortization payment of the principal amount of any Loan under Section 2.08 or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly and adversely affected thereby, (iv) change any of the provisions of this Section without the written consent of each Lender directly and adversely affected thereby, *provided* that any such change which is in favor of a Class of Lenders holding Loans maturing after the maturity of other Classes of Lenders (and only takes effect after the maturity of such other Classes of Loans or Commitments) will require the written consent of the Required Lenders with respect to each Class directly and adversely affected thereby, (v) change any of the provisions of this Section or the percentage set forth in the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vi) release all or substantially all the value of the Guarantees under the Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender (other than a Defaulting Lender or a Disqualified Lender), (vii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender (other than a Defaulting Lender or a Disqualified Lender) (except as expressly provided in the Loan Documents), (viii) change any of the provisions of Section 2.16(b), Section 2.16(c) or any other provision in the Loan Documents in a manner that would by its terms alter the pro rata sharing and/or application of payments or proceeds of Collateral required thereby or any other provision in the Loan Documents in a manner that would by its terms alter the pro rata sharing and/or application of payments or proceeds of Collateral required thereby without the written consent of each Lender directly and adversely affected thereby, (ix) permits the creation or the existence of any Subsidiary that would be “unrestricted” or otherwise excluded from the requirements, taken as a whole, applicable to Subsidiaries pursuant to this Agreement without the written consent of each Lender affected thereby, (x) amend or modify the definition of “Material Intellectual Property” or “Material Intellectual Property Provision” or the last paragraph of Section 6.05 or the last paragraph of Section 6.06 without the written consent of each Lender directly and adversely affected thereby, (xi) authorize additional Indebtedness that would be issued under the Loan Documents for the purpose of influencing voting thresholds without the written consent of each Lender directly and adversely affected thereby, (xii) amend or modify the Loan Documents to allow for purchases of Term Loans (by dutch auction, open market purchase or through other assignments) by Holdings, any Intermediate Parent, the Borrower or any of their Subsidiaries or Affiliates, in each case, using consideration other than cash without the written consent of each Lender directly and adversely affected thereby, (xiii) amend or modify Section 9.15 or provide that Subsidiaries that are not wholly-owned Subsidiaries are not required to become Subsidiary Loan Parties without the written consent of each Lender directly and adversely affected thereby or (xiv) subordinates the Initial Term Facility to any other Indebtedness or subordinates the Lien securing the Initial Term Facility to any other Lien securing any other Indebtedness without the written consent of Lenders having Term Loans representing more than 66.67% of the aggregate Dollar Amount of Term Loans (*provided* that, to the extent that any Lender is providing such other Indebtedness, the opportunity to participate in such financing shall be offered to all other Lenders on a pro rata basis), in each case, except in the case of (x) any Indebtedness that is expressly permitted by the Loan Documents as in effect on the Effective Date to be senior to the Loans and/or be secured by a Lien that is senior to the Lien securing the Loans, (y) any “debtor-in-possession” facility or (z) any other Indebtedness exchanged for Term Loans so long as such Indebtedness is offered ratably to all Term Lenders, *provided further*, that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative



Agent without the prior written consent of the Administrative Agent, (B) [reserved], (C) [reserved], (D) the Administrative Agent may, from time to time on and after the Effective Date, without any further consent of any Lender or counterparty to any Secured Cash Management Obligation or Secured Swap Obligation, enter into amendments to, amendments and restatements of, and/or replacements of, any Intercreditor Agreement, and enter into any other intercreditor agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted under this Agreement, in each case, in order to effect the first-priority Liens on the Collateral and to provide for certain additional rights, obligations and limitations in respect of, any Liens required by the terms of this Agreement to be junior priority Liens or other Liens that are, in each case, incurred in accordance with Article VI of this Agreement, and to establish certain relative rights as between the holders of the Secured Obligations and the holders of the Indebtedness secured by such Liens, (E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by Holdings, the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency; provided that, such amendment shall be posted for review by the Lenders, and such amendment shall become effective only if Required Lenders have not objected to such amendment within ten (10) Business Days, (F) [reserved] and (G) [reserved]. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents, *provided* that such credit facilities shall rank *pari passu* or junior in terms of both priority of Liens on Collateral securing, and right of payment with, the Secured Obligations, and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion, (b) this Agreement and other Loan Documents may be amended or supplemented by an agreement or agreements in writing entered into by the Administrative Agent and Holdings, the Borrower or any Loan Party as to which such agreement or agreements is to apply, without the need to obtain the consent of any Lender, to include “parallel debt” or similar provisions, and any authorizations or granting of powers by the Lenders and the other Secured Parties in favor of the Administrative Agent, in each case required to create in favor of the Administrative Agent any security interest contemplated to be created under this Agreement, or to perfect any such security interest, where the Administrative Agent shall have been advised by its counsel that such provisions are necessary or advisable under local law for such purpose (with Holdings and the Borrower hereby agreeing to, and to cause their subsidiaries to, enter into any such agreement or agreements upon reasonable request of the Administrative Agent promptly upon such request) and (c) upon notice thereof by the Borrower to the Administrative Agent with respect to the inclusion of any previously absent financial maintenance covenant, this Agreement shall be amended by an agreement in writing entered into by the Borrower and the Administrative Agent without the need to obtain the consent of any Lender to include such covenant on the date of the incurrence of the applicable Indebtedness to the extent required by the terms of such definition or section.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders, to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section being referred to as a “Non-Consenting Lender”), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment),



*provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld,

(d) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.09(a)(i)), payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) unless waived, the Borrower or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b).

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Loans of any Lender that is at the time (i) [reserved], (ii) a Defaulting Lender or (iii) a Disqualified Lender, shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class) or the Required Lenders, have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(f) [Reserved].

(g) Notwithstanding anything to the contrary contained in this Section 9.02, the Guarantee, the Security Documents and related documents executed by Holdings, any Intermediate Parent, the Borrower or its Subsidiaries in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guarantee, Security Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein).

#### SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay, if the Effective Date occurs, (i)(A) all reasonable and documented or invoiced out-of-pocket expenses incurred by each of the Administrative Agent and the Escrow Agent and its respective Affiliates (without duplication), including the reasonable fees, charges and disbursements of one primary counsel for each such Agent, respectively, and to the extent reasonably determined by such Agent to be necessary one local counsel in each applicable jurisdiction or otherwise retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), in each case for each such Agent, respectively, and to the extent retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), consultants, in connection with their due diligence investigation, the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (B) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Required Lenders, including the reasonable fees, charges and disbursements of one primary counsel for the Required Lenders and to the extent reasonably determined by the Required Lenders to be necessary one local counsel in each applicable jurisdiction or otherwise retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), in each case for the Required Lenders, and to the extent retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed),



consultants, in connection with their due diligence investigation, the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (ii) (A) all reasonable and documented or invoiced out-of-pocket expenses incurred by each of the Administrative Agent and the Escrow Agent and its respective Affiliates, including the fees, charges and disbursements of one primary counsel for each such Agent, respectively, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that such counsel shall be limited to one lead counsel and one local counsel in each applicable jurisdiction and, in the case of an actual or perceived conflict of interest, one additional counsel per affected party and (B) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Required Lenders, including the fees, charges and disbursements of counsel for the Required Lenders, in connection with the enforcement or protection of their rights in connection with the Loan Documents, including their rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that such counsel shall be limited to one lead counsel and one local counsel in each applicable jurisdiction and, in the case of an actual or perceived conflict of interest, one additional counsel per affected party.

(b) The Borrower shall indemnify each Agent, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and reasonable and documented or invoiced out-of-pocket fees and expenses of one counsel and one local counsel in each applicable jurisdiction (and, in the case of an actual or perceived conflict of interest, where the Indemnatee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional counsel for such affected Indemnatee) for all similarly situated Indemnitees, taken as whole (which may include a single special counsel acting in multiple jurisdictions), incurred by or asserted against any such Indemnatee by any third party or by Holdings, any Intermediate Parent, the Borrower or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) to the extent in any way arising from or relating to any of the foregoing, any actual or alleged presence or Release of Hazardous Materials on, at or from any Mortgaged Property or any other property currently or formerly owned or operated by Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary, or any other Environmental Liability, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings, any Intermediate Parent, the Borrower or any Subsidiary and regardless of whether any Indemnatee is a party thereto, *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of the Loan Documents by, such Indemnatee or its Related Parties or (ii) result from any dispute between and among indemnified persons that does not involve an act or omission by Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries or any of their representatives, except that each Agent and the Lenders shall be indemnified in their capacities as such to the extent that none of the exceptions set forth in clause (i) applies to such Person at such time. This Section 9.03 shall not apply to Taxes other than any Taxes with respect to losses, claims or damages arising from any non-Tax claim.



(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, and without limiting the Borrower's obligation to do so, each Lender severally agrees to pay to the Administrative Agent such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such or in its capacity as Collateral Agent. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the aggregate outstanding Loans and unused Commitments at the time.

(d) To the fullest extent permitted by applicable law, none of Holdings, any Intermediate Parent, the Borrower or any of its Subsidiaries shall assert, and each hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties, or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than 10 Business Days after written demand therefor; *provided, however*, that any Indemnitee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnitee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section), the financial advisors of the Loan Parties (to the extent expressly provided in Article 8) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (2) Subject to the conditions set forth in paragraphs (b)(ii), (f) and (h) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it under one or more Facilities) with the prior written consent (such consent (except with respect to assignments to competitors of the Borrower) not to be unreasonably withheld or delayed) of (A) the Borrower, *provided* that no consent of the Borrower shall be required for an assignment by any Term Lender of Term Loans to any Lender or to an Affiliate of any Lender, (iii) any Term Lender of Term Loans to an Approved Fund or (iv) if an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing, any Lender to any other Eligible Assignee; and *provided further*, that the Borrower shall have the right to



withhold its consent to any assignment if, in order for such assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority and (B) the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required for an assignment of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund or to the Borrower or any Affiliate thereof. Notwithstanding anything in this Section 9.04 to the contrary, if the consent of the Borrower is otherwise required by this paragraph with respect to any assignment of Loans, and the Borrower has not given the Administrative Agent written notice of its objection to such assignment within 15 Business Days after written notice to the Borrower, the Borrower shall be deemed to have consented to such assignment.

(i) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless the Borrower and the Administrative Agent otherwise consent (such consent not to be unreasonably withheld or delayed), *provided* that no such consent of the Borrower shall be required if an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing, (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, *provided* that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together (unless waived by the Administrative Agent) with a processing and recordation fee of \$3,500 (*provided* that (x) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment), *provided* that assignments made pursuant to Section 2.17(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective; and (D) the assignee, if it shall not be a Lender, shall deliver to the Borrower and the Administrative Agent any tax forms required by Section 2.15(e) and shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.13, 2.15 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this



Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c)(i) of this Section.

(iii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and stated interest amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and Holdings, the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(iv) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire and any tax forms required by Section 2.15(e) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(v) The words “execution,” “signed,” “signature” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other Persons (other than to the Borrower or any of its Affiliates or a Person that is not an Eligible Assignee; (a “Participant”), *provided further*, that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.13 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also



shall be entitled to the benefits of Section 9.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 2.16(c) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.13 or Section 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior consent (not to be unreasonably withheld or delayed).

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"), *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary in connection with a Tax audit or other proceeding to establish that such Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive (absent manifest error), and each Person whose name is recorded in the Participant Register pursuant to the terms hereof shall be treated as a Participant for all purposes of this Agreement, notwithstanding notice to the contrary

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank, and this Section shall not apply to any such pledge or assignment of a security interest, *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPV"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement, *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, such party will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity or credit support to or for the account of such SPV to support



the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(f) Notwithstanding anything herein to the contrary, except with the consent of the Required Consenting Term Lenders (as defined in the RSA), none of the Lenders may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Loan Document Obligations owed to it and its Commitments) to one or more assignees prior to the closing of all assignments made in connection with the Primary Syndication (if any) and any prohibited assignment shall be absolutely void ab initio, and the Administrative Agent shall not record such assignment on the Register or treat any purported transferee of such Loan as the owner of such Loan.

(g) Following the Effective Date, if so elected at the sole option of the Required Lenders, each Lender shall, in connection with the Primary Syndication, be obligated to assign its proportionate share in accordance with the Primary Syndication Procedures to each participating Eligible Holder (as defined in the Primary Syndication Procedures) in accordance with the Primary Syndication Procedures. The Required Consenting Term Lenders (as defined in the RSA) in consultation with the Administrative Agent shall be authorized to establish a syndication escrow account in connection with the Primary Syndication Procedures (i) to hold the proceeds of the Primary Syndication and (ii) to accept and disburse funds from such syndication escrow account in accordance with the Primary Syndication Procedures. Notwithstanding anything to the contrary, no consent of the Borrower shall be required for an assignment made in connection with the Primary Syndication.

(h) Notwithstanding anything herein or in any other Loan Document to the contrary, no Lender may assign any portion of its Loans or Commitments to any Disqualified Lender or to Holdings, the Borrower or any of their respective Subsidiaries and Affiliates.

(i) Notwithstanding anything herein or in any other Loan Document to the contrary, the Administrative Agent shall not (i) except to the extent of its own gross negligence or willful misconduct in taking or failing to take any action, be responsible for, have any liability with respect to, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders or have any liability with respect to or arising out of any assignment or participation of Loans or Commitments to any Disqualified Lender and (ii) except to the extent arising out of its or its Related Parties' gross negligence or willful misconduct, have any liability with respect to any disclosure of confidential information to any Disqualified Lender.

**SECTION 9.05     Survival.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.13, 2.15 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.



SECTION 9.06     Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07     Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08     Right of Setoff. If an Event of Default under Section 7.01(a), (b), (h) or (i) shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of the Borrower or any other Loan Party against any of and all the obligations of the Borrower or any other Loan Party then due and owing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender shall notify the Borrower and the Administrative Agent of such setoff and application, *provided* that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Notwithstanding the foregoing, no amount set off from any Guarantor shall be applied to any Excluded Swap Obligation from such Guarantor.

SECTION 9.09     Governing Law; Jurisdiction; Consent to Service of Process.

(a)     This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b)     Each of parties hereto hereby irrevocably and unconditionally submits (except to the extent expressly set out in those Loan Documents which are expressed to be governed by English Law), for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in



any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against Holdings, the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each of parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 9.10 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**SECTION 9.11 Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**SECTION 9.12 Confidentiality.**

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and any failure of such Persons to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Administrative Agent or the relevant Lender, as applicable), (b) (x) to the extent requested by any regulatory (including self-regulatory) authority, required by applicable law or by any subpoena or similar legal process or (y) necessary in connection with the exercise of remedies; *provided* that, (i) in each case, unless specifically prohibited by applicable law or court order, each Lender and the Administrative Agent shall notify the Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency or other routine examinations of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information and (ii) in the case of clause (y) only, each Lender and the Administrative Agent shall use reasonable best efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, and *provided further*, that in no event shall any Lender or the Administrative



Agent be obligated or required to return any materials furnished by Holdings, the Borrower or any of their Subsidiaries, (c) to any other party to this Agreement, (d) subject to an agreement containing confidentiality undertakings substantially similar to those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to any Loan Party or their Subsidiaries and its obligations under the Loan Documents, (e) with the consent of the Borrower, in the case of Information provided by Holdings, the Borrower or any other Subsidiary, (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than Holdings or the Borrower or (g) to any ratings agency or the CUSIP Service Bureau on a confidential basis. In addition, the Agents and the Lenders may disclose the existence of this Agreement and publicly available information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments and the Borrowings hereunder. For the purposes of this Section, “Information” means all information received from Holdings or the Borrower relating to Holdings, the Borrower, any Subsidiary or their business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by Holdings or the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT, WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13 USA Patriot Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of Title III of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify each Loan Party in accordance with the Title III of the USA Patriot Act.



SECTION 9.14     [Reserved].

SECTION 9.15     Release of Liens and Guarantees. A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary. Upon (i) any sale or other transfer by any Loan Party (other than to Holdings, any Intermediate Parent, the Borrower or any other Loan Party) of any Collateral in a transaction permitted under this Agreement or (ii) the effectiveness of any written consent to the release of the security interest created under any Security Document in any Collateral or the release of any Loan Party from its Guarantee under the Guarantee Agreement pursuant to Section 9.02, the security interests in such Collateral created by the Security Documents or such guarantee shall be automatically released. Upon the payment in full in cash of all the Secured Obligations (other than Secured Cash Management Obligations and Secured Swap Obligations and contingent obligations in respect of which no claim has been made) and the termination or expiration of all Commitments, all obligations under the Loan Documents and all security interests created by the Security Documents shall be automatically released. In connection with any termination or release pursuant to this Section, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent. The Lenders and other Secured Parties irrevocably authorize the Administrative Agent to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(iv) or (xii) to the extent required by the terms of the obligations secured by such Liens pursuant to documents reasonably acceptable to the Administrative Agent). Notwithstanding anything to the contrary, no Subsidiary Loan Party shall be automatically released from its Guarantee (and related Collateral security) solely by virtue of such Person becoming an Excluded Subsidiary, other than in each case, in connection with a transaction permitted under this Agreement that was done for a bona fide business purpose and not in contemplation of adversely affecting the Secured Parties' interests in the Guarantees and Collateral.

SECTION 9.16     No Fiduciary Relationship. Each of Holdings and the Borrower, on behalf of itself and its subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, Holdings, the Borrower, the other Subsidiaries and their Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lenders or their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

SECTION 9.17     Secured Cash Management Obligations and Secured Swap Obligations. Except as otherwise expressly set forth herein or in any Guarantee or any Security Document, no party to any Secured Cash Management Obligation or Secured Swap Obligation that obtains the benefits of Section 7.02, any Guarantee or any Collateral by virtue of the provisions hereof or of any Guarantee or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Obligations and Secured Swap Obligations unless the Administrative Agent has received written notice of such



Secured Cash Management Obligations or Secured Swap Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Agent, Lender or Affiliate of an Agent or Lender party thereto.

SECTION 9.18 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Loan Document Obligations hereunder.

SECTION 9.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.20 Intercreditor Agreements.

(a) Notwithstanding anything to the contrary set forth herein, this Agreement is subject to the terms and provisions of the Effective Date Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement and the Effective Date Intercreditor Agreement, the provisions of the Effective Date Intercreditor Agreement govern and control. The Lenders hereby authorize the Administrative Agent to (a) enter into the Effective Date Intercreditor Agreement, (b) bind the Lenders on the terms set forth in the Effective Date Intercreditor Agreement and (c) perform and observe its obligations under the Effective Date Intercreditor Agreement.

(b) [Reserved].



#### SECTION 9.21 Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to any party hereto or any holder of any obligation owing hereunder (the “Applicable Creditor”) shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than the currency in which such sum is stated to be due hereunder (the “Agreement Currency”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the applicable Loan Parties agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

#### SECTION 9.22 Erroneous Payments.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 9.22 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such



Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower.

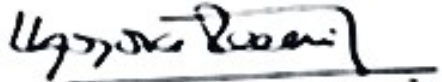
(d) Each party's obligations under this Section 9.22 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Documents.

*[Remainder of page intentionally blank; signature pages follow.]*



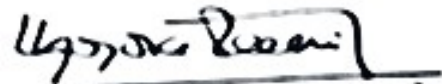
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CYXTERA DC HOLDINGS, INC.,  
as the Borrower

By: 

Name: Carlos I. Sagasta  
Title: Executive Vice President and  
Chief Financial Officer

CYXTERA DC PARENT HOLDINGS,  
INC.,  
as Initial Holdings

By: 

Name: Carlos I. Sagasta  
Title: Executive Vice President and  
Chief Financial Officer



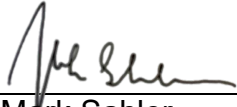
**Agent:**

**WILMINGTON SAVINGS FUND  
SOCIETY, FSB,**  
as Administrative Agent and Collateral Agent

By: John McNichol  
Name: John McNichol  
Title: Assistant Vice President



**JEFFERIES CAPITAL SERVICES, LLC**

By:   
Name: \_\_\_\_\_ Mark Sahler  
Title: Managing Director



Annex I  
Milestones  
[attached]



## Annex I

### SECTION 1.01. Defined Terms.

(a) Each capitalized term used but not defined herein shall have the meaning assigned thereto in the Restructuring Support Agreement, dated as of May [ \_ ], 2023 (as amended, restated, supplemented or otherwise modified from time to time, “**RSA**”), including, the exhibits, annexes and schedules thereto.

(b) The rules of construction specified in Section 1.02 of the RSA also apply to this Agreement, *mutatis mutandis*.

SECTION 1.02. Milestones. General Milestones. The following Milestones shall apply in any event:

(i) No later than 3 days after the Agreement Effective Date, the Company Parties shall have provided the members of the AHG with the Diligence Materials, which shall be in form and substance satisfactory to the Required Consenting Term Lenders;

(ii) No later than the Launch Date, the Company Parties shall have commenced reaching out to Potential Purchasers;

(iii) No later than 5 Business Days after the Launch Date, the Company Parties shall have commenced a good faith analysis of its existing executory contracts and unexpired leases with the purpose of reducing go-forward costs and expenses;

(iv) No later than May 12, 2023:

a. the Company Parties shall have appointed (A) a Chief Restructuring Officer, who shall be acceptable to the Required Consenting Term Lenders and shall report to the Special Committee; provided that, for the avoidance of doubt, the Required Consenting Term Lenders hereby consent to the appointment of Eric Koza as the Chief Restructuring Officer and (B) the Independent Directors;

b. the Company Parties shall establish the Special Committee; and

c. the Company Parties and the Required Consenting Term Lenders shall decide, in their reasonable judgment, whether to (A) continue pursuing the out-of-court Marketing Process, or (B) pursue, after filing the Chapter 11 Cases, (1) a Recapitalization Transaction or (2) a dual track process that allows the Company Parties to “toggle” between a Recapitalization Transaction or a Sale Transaction;



(v) No later than 2 weeks after the execution of this Agreement, the Company Parties shall provide the AHG and the Consenting Sponsors' Professionals with copies of all material first-day filings, pleadings, and other first-day documentation in connection with a potential chapter 11 filing;

(vi) In the event a Toggle Date occurs, the Company Parties shall commence the Chapter 11 Cases no later than 5 Business Days after the Toggle Date; and

(vii) No later than May 14, 2023, the Petition Date shall have occurred.

(b) Out-of-Court Milestones. Solely to the extent that the Toggle Date has not occurred, the following Milestones shall apply:

(i) The Company Parties shall request that Potential Purchasers submit IOIs from Potential Purchasers no later than 4 weeks after the Launch Date (the "**IOI Deadline**");

(ii) No later than 3 Business Days after the IOI Deadline, the Company Parties shall provide the AHG Professionals with a reasonably detailed summary of recent Potential Purchaser activity;

(iii) The Company Parties shall request that Potential Purchasers submit Final Bids no later than 9 weeks after the Launch Date (the "**Final Bid Deadline**");

(iv) No later than the Final Bid Deadline, the Company Parties shall provide the AHG Professionals with a copy of each Final Bid received;

(v) No later than 3 Business Days after the Final Bid Deadline, the Company Parties shall provide the AHG Professionals with a reasonably detailed summary of Potential Purchaser activity;

(vi) No later than 13 weeks after the Launch Date, the Company Parties shall have negotiated and signed the Purchase Agreement to effectuate an Acceptable Transaction;

(vii) No later than 3 Business Days after execution of the Purchase Agreement, the Company Parties shall provide the AHG Professionals with a reasonably detailed summary of recent Potential Purchaser activity; and

(viii) No later than August 15, 2023, the Sale Transaction shall have closed ("**Sale Closing Date**").

(c) In-Court Dual Track Milestones. To the extent the Company Parties and the Required Consenting Term Lenders have agreed to continue to pursue a Sale Transaction in parallel with the Recapitalization Transaction, the following Milestones shall apply:

(i) No later than 5 days prior to the Petition Date, the Company Parties shall have delivered to the AHG and the Consenting Sponsors DIP Documents that are reasonably acceptable to the Required Consenting Term Lenders;



(ii) On the Petition Date, the Company Parties shall file (A) the Plan (which shall afford the Company Parties flexibility to “toggle” between a Sale Transaction and a Recapitalization Transaction), (B) the Disclosure Statement, (C) a motion seeking entry of Scheduling Order (if applicable), and (D) the Bidding Procedures Motion;

(iii) No later than 2 Business Days after the Petition Date, subject to Bankruptcy Court availability, the Bankruptcy Court shall have entered (A) the interim DIP Order and (B) the Scheduling Order (if applicable);

(iv) No later than 10 Business Days after the Petition Date, the Company Parties shall provide the AHG Professionals with a detailed update as to the status of negotiations with counterparties to executory contracts and leases on a contract-by-contract basis;

(v) Subject to the availability of the Bankruptcy Court, if applicable, the Bidding Procedures Order shall be entered no later than 30 days after the Petition Date;

(vi) No later than 30 days after the Petition Date, the Bankruptcy Court shall have entered the final DIP Order;

(vii) If applicable, the deadline for submitting qualified bids pursuant to the Bidding Procedures shall be no later than 45 days after the Petition Date;

(viii) If applicable, any auction to select a winning bid pursuant to the Bidding Procedures shall commence no later than 60 days after the Petition Date;

(ix) If applicable, an order approving a Sale Transaction (on a conditional basis if such Sale Transaction is to be consummated pursuant to the Plan and on a final basis if such Sale Transaction is consummated pursuant to section 363 of the Bankruptcy Code) shall be entered by the Bankruptcy Court no later than 70 days after the Petition Date;

(x) No later than 70 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Disclosure Statement;

(xi) No later than 110 days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order; and

(xii) No later than the 120 days after the Petition Date, the Plan Effective Date shall have occurred; provided that, if necessary regulatory approvals associated with a Restructuring Transaction remain pending as of such date, this date shall automatically be extended to the date that is the third Business Day following receipt of all necessary regulatory approvals.



(d) In-Court Recap Milestones. Unless the Company Parties and the Required Consenting Term Lenders have agreed to continue to pursue a Sale Transaction in parallel with the Recapitalization Transaction, the following Milestones shall apply:

(i) No later than 5 days prior to the Petition Date, the Company Parties shall have delivered to the AHG and the Consenting Sponsors DIP Documents that are reasonably acceptable to the Required Consenting Term Lenders;

(ii) No later than 1 Business Day prior to the Petition Date, the Company Parties shall have commenced solicitation of the Plan;

(iii) On the Petition Date, the Company Parties shall file (A) the Plan (votes for which shall have already been solicited), (B) the Disclosure Statement, and (C) a motion seeking entry of Scheduling Order;

(iv) No later than 2 Business Days after the Petition Date, subject to Bankruptcy Court availability, the Bankruptcy Court shall have entered (i) the interim DIP Order and (ii) the Scheduling Order (if applicable);

(v) No later than 10 Business Days after the Petition Date, the Company Parties shall provide the AHG Professionals with a detailed update as to the status of negotiations with counterparties to executory contracts and leases on a contract-by-contract basis;

(vi) No later than 30 days after the Petition Date, the Bankruptcy Court shall have entered the final DIP Order;

(vii) No later than 45 days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order and the Disclosure Statement Order; and

(viii) No later than 60 days after the Petition Date, the Plan Effective Date shall have occurred; provided that, if necessary regulatory approvals associated with a Restructuring Transaction remain pending as of such date, this date shall automatically be extended to the date that is the third Business Day following receipt of all necessary regulatory approvals.



This is **Exhibit "L"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



Cash	\$ 5,711,022.76
Trade Receivables	1,770,320.29
Prepaid and Other CA	689,505.53
Current Assets	<u>\$ 8,170,848.58</u>

Property and Equipment	62,920,804.60
Operating, ROU	4,592,933.49
Goodwill	15,130,020.46
Net Intangible Asset	5,298,165.73
Other Long Term Asset	810,674.59

<b>Total Assets</b>	<b><u>\$ 96,923,447.45</u></b>
---------------------	--------------------------------

Trade Payables	(440,682.41)
Accrued Expenses	(1,110,807.39)
Intercompany Payable	(27,622,606.08)
Operating Lease ST	(651,001.88)
Capital lease, current portion	-
Deferred Revenue	(2,503,355.75)
Other Current Liabilities	(109,426.25)
Current Liabilities	<u>\$ (32,437,879.76)</u>

Non-Current Liabilities	
Operating Lease -NC	(3,941,931.61)
LT Cap Lease Obligation	(22,201,525.84)
Deferred tax liability	(1.85)
Other Long Term Liability	(2,928,728.92)

<b>Total Liabilities</b>	<b><u>\$ (61,510,067.98)</u></b>
--------------------------	----------------------------------

Stockholders Equity	(45,818,405.29)
Net Income	10,405,025.82
Equity	<u>\$ (35,413,379.47)</u>

<b>Total Liabilities and Stockholders Equity</b>	<b><u>\$(96,923,447.45)</u></b>
--	---------------------------------

check



This is **Exhibit "M"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



**Search ID #:** Z16188798

**Transmitting Party**

ELDOR-WAL REGISTRATIONS (1987) LTD.

1200, 10123 99 st NW  
EDMONTON, AB T5J 3H1

Party Code: 50073881  
Phone #: 780 429 5969  
Reference #:

**Search ID #:** Z16188798

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:21

**Business Debtor Search For:**

CYXTERA COMMUNICATIONS CANADA, ULC

Both Exact and Inexact Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.





**Search ID #:** Z16188798

**Business Debtor Search For:**

CYXTERA COMMUNICATIONS CANADA, ULC

**Search ID #:** Z16188798

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:21

---

Registration Number: 19100919536

Registration Date: 2019-Oct-09

Registration Type: SALE OF GOODS OR FACTORS ACT

Registration Status: Current

Expiry Date: 2044-Oct-09 23:59:59

---

Inexact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

Current

1 CYXTERA COMMUNICATIONS CANADA, INC.  
1600-421 7 AVE. SW  
CALGARY, AB T2P 4K9

**Secured Party / Parties**

**Block**

**Status**

Current

1 COMPAGNIE DE SERVICES FINANCIERS HEWLETT-PACKARD CANADA  
5150 SPECTRUM WAY  
MISSISSAUGA, ON L4W 5G1

**Block**

**Status**

Current

2 HEWLETT-PACKARD FINANCIAL SERVICES CANADA COMPANY  
5150 SPECTRUM WAY  
MISSISSAUGA, ON L4W 5G1



Search ID #: Z16188798

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	ALL PRESENT AND FUTURE GOODS, SOFTWARE AND OTHER PERSONAL PROPERTY NOW OR HEREAFTER FINANCED OR LEASED BY SECURED PARTY TO DEBTOR, WHETHER OR NOT BEARING THE NAME "HEWLETT-PACKARD", "HP" OR "HEWLETT PACKARD ENTERPRISE" OR ANOTHER TRADE MARK OR TRADE NAME OWNED BY A MEMBER OF THE CORPORATE FAMILY OF ANY OF THE FOREGOING, INCLUDING WITHOUT LIMITATION ALL COMPUTER, TELECOMMUNICATIONS, PRINTING, IMAGING, COPYING, SCANNING, PROJECTION, GRAPHICS, NETWORKING, STORAGE AND POINT OF SALE EQUIPMENT, INCLUDING WITHOUT LIMITATION SERVERS, LAPTOPS, DESKTOPS, TABLETS, SMART PHONES AND OTHER HAND HELD DEVICES, PRINTERS, PRINTING PRESSES, SCANNERS, FAX MACHINES, DIGITAL PHOTOGRAPHY AND IMAGING DEVICES, INK, TONER, WORKSTATIONS, PLATFORM CARTS, TAPE LIBRARIES, ATMS, CASH REGISTERS; AND ANY AND ALL ATTACHMENTS, ACCESSORIES, ADDITIONS, GENERAL INTANGIBLES, SUBSTITUTIONS, PRODUCTS, REPLACEMENTS, RENTALS, MANUALS AND ANY RIGHT, TITLE OR INTEREST IN ANY SOFTWARE USED TO OPERATE OR OTHERWISE INSTALLED IN ANY OF THE FOREGOING (INCLUDING WITHOUT LIMITATION NETWORKING SOLUTIONS, SYSTEM SECURITY AND STORAGE SOLUTIONS, CLOUD SOLUTIONS, AND ENTERPRISE SOLUTIONS), FURNITURE AND FIXTURES, RACKS, ENCLOSURES AND NODES; AND ALL PROCEEDS OF THE FOREGOING INCLUDING WITHOUT LIMITATION, MONEY, CHATTEL PAPER, INTANGIBLES, GOODS, DOCUMENTS OF TITLE, INSTRUMENTS, INVESTMENT PROPERTY, FIXTURES, LICENSES, SUBSTITUTIONS, ACCOUNTS RECEIVABLE, RENTAL AND LOAN CONTRACTS, ALL PERSONAL PROPERTY RETURNED, TRADED-IN OR REPOSSESSED AND ALL INSURANCE PROCEEDS AND ANY OTHER FORM OF PROCEEDS.	Current



**Search ID #:** Z16188798

**Business Debtor Search For:**

CYXTERA COMMUNICATIONS CANADA, ULC

**Search ID #:** Z16188798

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:21

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Registration Number: 22081726648

Registration Type: SECURITY AGREEMENT

Registration Date: 2022-Aug-17

Registration Status: Current

Expiry Date: 2027-Aug-17 23:59:59

---

Inexact Match on: Debtor No: 1

---

**Debtor(s)**

**Block**

**Status**

Current

1 CYXTERA COMMUNICATIONS CANADA, INC.  
4175 14TH AVENUE, UNIT 8/9  
MARKHAM, ON L3R 5R5

**Secured Party / Parties**

**Block**

**Status**

Current

1 LIBERTY COMMERCIAL FINANCE  
18302 IRVINE BLVD., SUITE 300  
TUSTIN, CA 92780  
Email: jeffrey.schimmel@cyxtera.com



Search ID #: Z16188798

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	<p>ALL OF THE DEBTOR'S INTERESTS IN THE FOLLOWING EQUIPMENT:  13 COMPU-AIRE CRAHS, SYSTECON PACKAGE AND GUENTNER FLUID COOLER;  CONTRACT WORK INCLUDING BUT NOT LIMITED TO THE FOLLOWING:  INSURANCE, PARTNERING, PROJECT MANAGEMENT, DRAWING AND  DOCUMENTATION, SAFETY SIGNAGE, PROJECT SIGNAGE, FIRE PROTECTION,  SECURITY, BUILDING PERMITS, INTERNET, CELLULAR, FURNITURE, COMPUTERS,  ON SITE TRAILERS, SANITATION ROOMS, TOOLS, STAFF, WASTE MANAGEMENT,  SDI, ALLOWANCES AND CONTINGENCIES;  1 QTY LOT: EATON 2 - TYPE 2-12" FLANGES:  POW-R-WAY III: AFTERMARKET, POW-R-WAY III, 3 PHASE, 4  WIRE, 100% NEUTRAL, 2500A, UL/CSA-CERTIFICATION,  347/600V, ALUMINUM - TIN PLATED BUS, 50% INTERNAL/ISOLATED GROUND LIST  OF MATERIALS 2 12 INCH FLANGES AND 2 BRIDGE JOINTS PER  DRAWING DATE 6/21/21;  1 EA LOT: EATONINDU 1 - TYPE CD-D1:  P4L3C12-36 1200A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS,  65KAIC, 1200A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-  SPACE:  28X, REMAINING X-SPACE: 28X, MAX X-SPACE FOR BRANCH DEVICES: 36X 1 -  TYPE CD-D1: SPRINKLERPROOF ENCLOSURE: SP3890P 1 - TYPE CD-D2: P4L3C12-  36 1200A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC,  1200A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 28X,  REMAINING X-SPACE: 28X, MAX X-SPACE FOR BRANCH DEVICES: 36X 1 - TYPE  CD-D2: SPRINKLERPROOF ENCLOSURE: SP3873P;</p>	Current
2	<p>1 EA LOT: EATONINDU 1 - TYPE MP-D1: P4L3C4-28  400A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 400A,  MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 9X,  REMAINING X-SPACE: 9X, MAX X-SPACE FOR BRANCH DEVICES: 28X  1 - TYPE DP-D1: P4L3C4-28;  1 EA LOT: EATONINDU  1 - TYPE MP-D2: P4L3C4-28  400A, FULLY RATED, 600V 3PH  3W, SILVER PLATED COPPER BUS,  65KAIC, 400 A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-  SPACE: 9X, REMAINING X-SPACE: 9X, MAX X-SPACE FOR BRANCH DEVICES: 28X 1  - TYPE MP-D1/D2: P4L3C2-28 250A, FULLY RATED,  600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 250A, MAIN LUGS ONLY  (BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 21X, REMAINING X-SPACE:  21X, MAX X-SPACE FOR BRANCH DEVICES:28X 1 - TYPE MP-D2/D1:  P4L3C2-28 250A, FULLY RATED,  600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 250A, MAIN LUGS ONLY  (BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 21X, REMAINING X-SPACE:  21X, MAX X-SPACE FOR BRANCH DEVICES: 28X 1 - TYPE MP-D1/D2-2: P4L3C2-28  250A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 250A,  MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 21X,  REMAINING X-SPACE: 21X, MAX X-SPACE FOR BRANCH DEVICES: 28X;  1 EA LOT: EATONINDU 1 - TYPE TSB-D: CANADIAN POW-R-LINE C, FRONT ACCESS/  FRONT AND REAR ALIGN, SPRINKLERPROOF, 600V 3-PHASE 3-WIRE, 2500SILVER  FLASHED COPPER, MINIMUM INTERRUPTING RATING: 65KA, BUS BRACING  RATING: 65KA;  1 EA LOT: EATONINDU 1 - TYPE PSB-D1: CANADIAN POW-R-LINE C, FRONT  ACCESS/ FRONT AND REAR ALIGN, SPRINKLERPROOF, 600V 3-PHASE 3-WIRE,  2500SILVER FLASHED COPPER, MINIMUM INTERRUPTING RATING: 65KA, BUS  BRACING RATING: 65KA;</p>	Current



**Search ID #:** Z16188798

3	<p>1 EA LOT: EATONINDU 1 - TYPE PSB-D2: CANADIAN POW-R-LINE C, FRONT ACCESS/ FRONT AND REAR ALIGN, SPRINKLERPROOF, 600V 3-PHASE 3-WIRE, 2500SILVER FLASHED COPPER, MINIMUM INTERRUPTING RATING: 65KA, BUS BRACING RATING: 65KA; 1 EA 2500 KVA 3 PHASE SUBSTATION TRANSFORMER; 1 EA 2500 KVA 3 PHASE SUBSTATION TRANSFORMER; 1 EA PDU; 4 QTY W5X24ONBH ACTIVITY NUMBER: WO-08899664 REPAIR ASSET PRODUCT SKU: E8TUPS555#2064508 ASSET SERIAL NUMBER: S14-10003; ACTIVITY NUMBER: WO-08988650 REPAIR CLOSE DATE: 22-NOV-21 ASSET PRODUCT SKU: E8TUPS555#2064508 ASSET SERIAL NUMBER: S14-10003 1 QTY 0J-98-18323-03 RELAY PHASE FAILURE &amp; UV 600V; 1 QTY BCPMA042S HDBPM, BRPWR, 3/4IN, 2X21 -100A,4 MCT, PVT-S4, INCLUDING ALL ADDITIONS, ACCESSIONS, AND ATTACHMENTS THERETO, AND ALL SUBSTITUTIONS AND REPLACEMENTS THEREOF. PROCEEDS: ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED GOODS, INVESTMENT PROPERTY, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES AND MONEY, ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF ALBERTA AND REGULATIONS THEREUNDER, DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALINGS WITH THE ORIGINAL COLLATERAL.</p>	Current
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**Search ID #:** Z16188798

**Business Debtor Search For:**

CYXTERA COMMUNICATIONS CANADA, ULC

**Search ID #:** Z16188798

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:21

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Registration Number: 23051111749

Registration Type: SECURITY AGREEMENT

Registration Date: 2023-May-11

Registration Status: Current

Expiry Date: 2028-May-11 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 CYXTERA COMMUNICATIONS CANADA, ULC  
2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES, FL 33134

Current

**Secured Party / Parties**

**Block**

**Status**

1 CITIBANK, N.A., AS AGENT  
388 GREENWICH STREET, 12TH FLOOR  
NEW YORK, NY 10013  
Email: GLOriginOps@citigroup.com

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the Debtor

Current



**Search ID #:** Z16188798

**Business Debtor Search For:**

CYXTERA COMMUNICATIONS CANADA, ULC

**Search ID #:** Z16188798

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:21

---

Registration Number: 23051111815

Registration Type: SECURITY AGREEMENT

Registration Date: 2023-May-11

Registration Status: Current

Expiry Date: 2028-May-11 23:59:59

---

Exact Match on:

Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

Current

1 CYXTERA COMMUNICATIONS CANADA, ULC  
2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES, FL 33134

**Secured Party / Parties**

**Block**

**Status**

Current

1 WILMINGTON SAVINGS FUND SOCIETY, FSB, AS COLLATERAL AGENT  
WSFS INSTITUTIONAL SERVICES 500 DELAWAR  
WILMINGTON, DE 19801  
Email: jmcnichol@wsfsbank.com

**Collateral: General**

**Block**

**Description**

**Status**

Current

1 All present and after-acquired personal property of the Debtor

Result Complete



# Search Results

for Business Debtor Name "Cyxtera Communications Canada, ULC" as of May 26, 2023 at 8:14:05 am Pacific time

Select the registrations you want to include in a printable PDF search report. Exact matches are automatically selected. This report will contain the full record of the registration for each selected match and will be automatically saved to your PPR Dashboard.

3 matches found | 2 exact matches | 2 total matches in 2 registrations added to report

 [Generate Search Result Report](#)

 [Select All](#)

Debtor Name

Exact Matches (2)	
<input checked="" type="checkbox"/> exact match added	CYXTERA COMMUNICATIONS CANADA, ULC
<input checked="" type="checkbox"/> exact match added	CYXTERA COMMUNICATIONS CANADA, ULC
Similar Matches (1)	
<input type="checkbox"/>	COTERA COMMUNICATIONS LTD.



**Business Debtor - "Cyxtera Communications Canada, ULC"**

**Search Date and Time:** May 26, 2023 at 8:14:05 am Pacific time  
**Account Name:** ELDOR-WAL REGISTRATIONS (1987) LTD.

**TABLE OF CONTENTS**

2 Matches in 2 Registrations in Report

Exact Matches: 2 (\*)

Total Search Report Pages: 5

	Base Registration	Base Registration Date	Debtor Name	Page
1	<a href="#">529466P</a>	May 11, 2023	* CYXTERA COMMUNICATIONS CANADA, ULC	<a href="#">2</a>
2	<a href="#">529469P</a>	May 11, 2023	* CYXTERA COMMUNICATIONS CANADA, ULC	<a href="#">4</a>



## Base Registration Number: 529466P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	May 11, 2023 at 8:10:40 am Pacific time
<b>Current Expiry Date and Time:</b>	May 11, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of May 26, 2023 at 8:14:05 am Pacific time)

### Secured Party Information

**CITIBANK, N.A., AS AGENT**

#### Address

388 GREENWICH STREET, 12TH FLOOR  
NEW YORK NY  
10013 United States of America

### Debtor Information

**CYXTERA COMMUNICATIONS  
CANADA, ULC**

#### Address

2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES FL  
33134 United States of America

### Vehicle Collateral

None

### General Collateral

**Base Registration General Collateral:**

All present and after-acquired personal property of the Debtor



## Original Registering Party

**ELDOR-WAL REGISTRATIONS (1987)  
LTD.**

**Address**

1200, 10123 99 STREET NW  
EDMONTON AB  
T5J 3H1 Canada





## Base Registration Number: 529469P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	May 11, 2023 at 8:11:43 am Pacific time
<b>Current Expiry Date and Time:</b>	May 11, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of May 26, 2023 at 8:14:05 am Pacific time)

### Secured Party Information

**WILMINGTON SAVINGS FUND  
SOCIETY, FSB, AS COLLATERAL  
AGENT**

#### Address

WSFS INSTITUTIONAL SERVICES 500 DELAWARE AVE  
WILMINGTON DE  
19801 United States of America

### Debtor Information

**CYXTERA COMMUNICATIONS  
CANADA, ULC**

#### Address

2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES FL  
33134 United States of America

### Vehicle Collateral

None

### General Collateral

**Base Registration General Collateral:**

All present and after-acquired personal property of the Debtor



## Original Registering Party

**ELDOR-WAL REGISTRATIONS (1987)  
LTD.**

**Address**

1200, 10123 99 STREET NW  
EDMONTON AB  
T5J 3H1 Canada





Liens : 2 Pages : 3

Searched :29MAY2023 10:21 AM

Printed :29MAY2023 10:39 AM

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 05/29/2023  
CCCL711 DISPLAY 1C REGISTRATION - SCREEN 1 10:21:34  
ACCOUNT : 009233-0001 FAMILY : 1 OF 2 ENQUIRY PAGE : 1 OF 3  
FILE CURRENCY : 28MAY 2023  
SEARCH : BD : CYXTERA COMMUNICATIONS CANADA, ULC

00 FILE NUMBER : 793221327 EXPIRY DATE : 11MAY 2028 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20230511 1146 1590 3070 REG TYP: P PPSA REG PERIOD: 5

02 IND DOB : IND NAME:  
03 BUS NAME: CYXTERA COMMUNICATIONS CANADA, ULC

OCN :

04 ADDRESS : 2333 PONCE DE LEON BLVD., SUITE 900  
CITY : CORAL GABLES PROV: FL POSTAL CODE: 33134

05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
CITIBANK, N.A., AS AGENT

09 ADDRESS : 388 GREENWICH STREET, 12TH FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10013

CONS.	GOODS	INVTRY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	DATE OF MATURITY	OR NO FIXED MAT DATE
	10	X	X	X	X	X			
		YEAR MAKE			MODEL			V.I.N.	

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: GOWLING WLG (CANADA) LLP - OTTAWA (BG)

17 ADDRESS : 2600-160 ELGIN STREET  
CITY : OTTAWA PROV: ON POSTAL CODE: K1P 1C3



PSSME02                      PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM                      05/29/2023  
CCCL711                      DISPLAY 1C REGISTRATION - SCREEN 1                      10:21:36  
ACCOUNT : 009233-0001                      FAMILY : 2 OF 2                      ENQUIRY PAGE : 2 OF 3  
FILE CURRENCY : 28MAY 2023  
SEARCH : BD : CYXTERA COMMUNICATIONS CANADA, ULC

00 FILE NUMBER : 793221912      EXPIRY DATE : 11MAY 2028 STATUS :  
01 CAUTION FILING :                      PAGE : 001 OF 2                      MV SCHEDULE ATTACHED :  
REG NUM : 20230511 1159 1590 3079 REG TYP: P      PPSA      REG PERIOD: 5  
02 IND DOB :                      IND NAME:  
03 BUS NAME: CYXTERA COMMUNICATIONS CANADA, ULC

OCN :

04 ADDRESS : 2333 PONCE DE LEON BLVD., SUITE 900  
CITY : CORAL GABLES                      PROV: FL      POSTAL CODE: 33134  
05 IND DOB :                      IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY :                      PROV:                      POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
WILMINGTON SAVINGS FUND SOCIETY, FSB, AS COLLATERAL AGENT

09 ADDRESS : WSFS INSTITUTIONAL SERVICES  
CITY : WILMINGTON                      PROV: DE      POSTAL CODE: 19801  
CONS.                      MV                      DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP      ACCTS      OTHER      INCL      AMOUNT      MATURITY      MAT DATE  
10                      X                      X                      X                      X                      X  
YEAR MAKE                      MODEL                      V.I.N.

11  
12  
GENERAL COLLATERAL DESCRIPTION

13  
14  
15  
16 AGENT: GOWLING WLG (CANADA) LLP - OTTAWA (BG)  
17 ADDRESS : 2600-160 ELGIN STREET  
CITY : OTTAWA                      PROV: ON                      POSTAL CODE: K1P 1C3

---



PSSME02                      PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM                      05/29/2023  
CCCL711                      DISPLAY 1C REGISTRATION - SCREEN 1                      10:21:40  
ACCOUNT : 009233-0001                      FAMILY : 2 OF 2                      ENQUIRY PAGE : 3 OF 3  
FILE CURRENCY : 28MAY 2023  
SEARCH : BD : CYXTERA COMMUNICATIONS CANADA, ULC

00 FILE NUMBER : 793221912      EXPIRY DATE : 11MAY 2028 STATUS :  
01 CAUTION FILING :                      PAGE : 002 OF 2                      MV SCHEDULE ATTACHED :  
REG NUM : 20230511 1159 1590 3079 REG TYP:                      REG PERIOD:  
02 IND DOB :                      IND NAME:  
03 BUS NAME:

OCN :

04 ADDRESS :  
CITY :                      PROV:                      POSTAL CODE:  
05 IND DOB :                      IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY :                      PROV:                      POSTAL CODE:  
08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS : 500 DELAWARE AVE.  
CITY :                      PROV:                      POSTAL CODE:  
CONS.                      MV                      DATE OF      OR NO FIXED  
GOODS INVTRY. EQUIP   ACCTS   OTHER   INCL      AMOUNT      MATURITY      MAT DATE

10  
YEAR MAKE                      MODEL                      V.I.N.

11  
12  
GENERAL COLLATERAL DESCRIPTION

13  
14  
15

16 AGENT:  
17 ADDRESS :  
CITY :                      PROV:                      POSTAL CODE:

---

**END OF REPORT**



Date, heure, minute de certification : **2023-05-29 10:06**

Critère de recherche

Nom d'organisme : **CYXTERA COMMUNICATIONS CANADA, ULC**

**Résultat exact (1)**

Fiche	Inscription	Date	h:min
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 23-0553920-0001	2023-05-12	09:00
002	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 23-0552626-0001	2023-05-11	14:12



Date, heure, minute de certification : **2023-05-29 10:06**

Critère de recherche

Nom d'organisme : **CYXTERA COMMUNICATIONS CANADA, ULC**

**Noms présentant des similarités (299)**

Nom	Code postal	Nombre de fiches détaillées
<input type="checkbox"/> 1204086 CANADA ULC	H3C 1N4	
<input type="checkbox"/> 35601 CUMMINS CANADA ULC	B3J 2X2	
<input type="checkbox"/> ABB ELECTRIFICATION CANADA ULC	H9R 1B4	
<input type="checkbox"/> ABB ELECTRIFICATION CANADA ULC	T6B 2S1	
<input type="checkbox"/> ABB ELECTRIFICATIONS CANADA ULC	J3B 3G5	
<input type="checkbox"/> AIT CANADA ULC	B3J 3N2	
<input type="checkbox"/> ALDERWOODS GROUP CANADA ULC	M2J 5C2	
<input type="checkbox"/> ALIGN AEROSPACE CANADA ULC	B3J 2X2	
<input type="checkbox"/> ALPHABRODER CANADA ULC	V6C 2X8	
<input type="checkbox"/> ALSTOM GRID CANADA ULC	V7X 1L3	
<input type="checkbox"/> ALSTOM RESEAU CANADA ULC	V7X 1L3	
<input type="checkbox"/> AMEREX CANADA ULC	B3J 3N2	
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+	CANADA ST NICOLAS HOLDINGS ULC	V6C 2X8
+	CAREFUSION CANADA 307 ULC	B3J 2X2
+	CARLISLE CANADA ULC	H9R 1A5
+	CASCADES CANADA ULC	H1J 0A6
+	CASCADES CANADA ULC	H3A 1G1
+	CASCADES CANADA ULC	H8S 2K9
+	CASCADES CANADA ULC	J0A 1B0
+	CASCADES CANADA ULC	J3V 6R7
+	CASCADES CANADA ULC	J4Y 3B7
+	CASCADES CANADA ULC	J5R 1C3
+	CASCADES CANADA ULC	N1H 6N9
+	CASCADES CANADA ULC	T2P 3N9
+	CATERPILLAR MINING CANADA ULC	M5H 2T6
+	CATERPILLAR MINING CANADA ULC	T5S 1M8
+	CB TRESTLES CANADA ULC	H4T 1W7
+	CELANESE CANADA ULC	G3B 0C9
+	CEPHEID CANADA ULC	H3X 2V8
+	CEPHEID CANADA ULC	J7V 4Y3
+	CEVA LOGISTICS CANADA ULC	H4S 1N7
+	CEVA LOGISTICS CANADA ULC	L6S 6E2
+	CHANEL CANADA ULC	J5R 1B6
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+	CHECKPOINT SYSTEMS CANADA ULC	L3R 3K6
+	CHECKPOINT SYSTEMS CANADA ULC	L3R 5N7
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+	CIT FINANCIAL CANADA ULC	T2P 4J8
+	COMMUNICATIONPL	G1E 4Y6
+	COMMUNICATIONS STA ULC	H9R 0A5
+	COMPAGNIE CANADA QSIP ULC	B3J 0J2
+	COMPAGNIE CANADA QSIP ULC	G9H 2V8
+	COMPOSITES ONE CANADA ULC	G3B 0G2
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+	CULLIGAN OF CANADA ULC	N3H 4R7
+	CULLIGAN OF CANADA ULC	T2P 4K9
+	CUMMINS CANADA ULC	V7X 1L3
+	DAL TILE OF CANADA ULC	H4T 1G2
+	DEALER TIRE CANADA ULC	V6Z 2M1
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































+	KRAFT HEINZ CANADA ULC	M3B 3L6
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+	LABRIE GP CANADA ULC	V6C 2X8
+	LE COMMUNICATEUR	H1J 1E6
+	LE COMMUNICATEUR	H1J 2H9
+	LE COMMUNICATEUR INC	H1J 2H9
+	LENNOX INDUSTRIES CANADA ULC	V7Y 1G5
+	LEVITON MANUFACTURING CANADA ULC	H9R 1E9
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+	LIFESCAN CANADA ULC	V6C 3L2
+	LOLE BRANDS CANADA ULC	V6E 0C5
+	LONGYEAR CANADA ULC	T2C 4T7
+	LOS CANADA OPERATIONS ULC	V6C 3E8
+	LUFKIN INDUSTRIES CANADA ULC	T2P 0B4
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+	MINUTE KEY CANADA ULC	V6C 2X8
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+	MOLSON CANADA GP ULC	V6E 0C5
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+	MONSANTO CANADA ULC	R3T 6E3
+	MONSANTO CANADA ULC	T5J 3V5
+	MOSAIC CANADA ULC	S4P 0M3
+	NATIONAL OILWELL CANADA ULC	T2P 0R8
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+	NEP CANADA ULC	
+	NEP CANADA ULC	T2P 2W1
+	NEP CANADA ULC	T2P 4K7
+	NORAMPAC A DIVISION OF CASCADES CANADA ULC	J3V 6R7
+	NOV CANADA ULC	T2P 5C5
+	NOV WILSON CANADA ULC	T2P 0R8
+	NOV WILSON CANADA ULC	T9E 7Z2
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	RYAM CANADA HOLDINGS ULC	J0Z 3R0
	SABIC POLYMERLAND CANADA ULC	T5J 3G1
	SAFWAY SERVICES CANADA ULC	T2M 3V7
	SAFWAY SERVICES CANADA ULC	T2P 4J8
	SAFWAY SERVICES CANADA ULC	T8L 2S3
	SANDALWOOD MANAGEMENT CANADA ULC	H3B 3V2
	SANDALWOOD MANAGEMENT CANADA ULC	H3E 1J4
	SANDLEWOOD MANAGEMENT CANADA ULC	H3E 1J4
	SBA CANADA ULC	T2P 5C5
	SHIRE PHARMA CANADA ULC	H4S 2C9
	SIGNODE CANADA ULC	B3J 2X2
	SOLENIS CANADA ULC	B3J 3N2
	SOLENIS CANADA ULC	H1K 4E4
	SOLENIS CANADA ULC	L7R 2J7
	SOLENIS CANADA ULC	M5L 1B9
	SPARTA CANADA ACQUISITION ULC	
	SPICERS CANADA ULC	H1J 1L8
	SPICERS CANADA ULC	H1J 2Y2
	SPICERS CANADA ULC	L4L 0B9
	SPICERS CANADA ULC	V6B 0M3
	SPICERS CANADA ULC	V6Z 2M4
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	SPRINGS CANADA PRODUCTS ULC	V6C 2X8
	STA COMMUNICATIONS ULC	H9R 0A5
	STAPLES CANADA ULC	
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	STAPLES CANADA ULC	V6C 2X8
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	STERIS CANADA SALES ULC	L4B 4W2
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	STERIS CANADA ULC	G1C 8A3
	STGENETICS CANADA ULC	J2S 3V4
	STREETSCAN CANADA ULC	H2W 1B6
	STRYKER CANADA ULC	L5C 4R3
	STRYKER CANADA ULC	L8B 1W2
	STYROCHEM CANADA ULC	T2P 5C5
	TARGETCO CANADA ULC	T2P 4J8
	TD WILLIAMSON CANADA ULC	T2P 0C1
	TELEGLOBE CANADA II ULC	B3J 2X2
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	TERADATA CANADA ULC	L4V 1R8
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+	THONA CANADA ULC	B3J 3N2
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+	TIC CANADA ULC	T5S 1G3
+	TIMKEN CANADA GP ULC	T2P 4K9
+	TNT CANADA ULC	H4S 1N7
+	TOP MARKS CANADA ULC	V6C 2X8
+	TORRINGTON CANADA ULC	N5P 1G5
+	TRANE CANADA ULC	H4S 1H3
+	TRANE CANADA ULC	M1W 2P3
+	TRANE CANADA ULC	V6C 0A3
+	TREE OF LIFE CANADA ULC	T2P 4K9
+	TREK BICYCLE CANADA ULC	V6C 3L2
+	TUBOSCOPE VETCO CANADA ULC	T5J 3S9
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+	TUYAUTERIES CANADA ULC	T2P 4K9
+	TYCO ELECTRONICS CANADA ULC	L3R 1E1
+	URGO HOTELS CANADA ULC	J8E 1C9
+	USQ CANADA RAIL ULC	
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+	VACUUM TRUCKS OF CANADA ULC	T2P 1G1
+	VARCO CANADA ULC	T5J 3V5
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+	VERTIV CANADA ULC	B3J 3N2
+	VESSEL CANADA ENTERPRISES ULC	V6B 1G1
+	VIAVI SOLUTIONS CANADA ULC	V6C 2B5
+	WD PARTNERS CANADA ULC	L4L 1T9
+	WEIGH TRONIX CANADA ULC	H9R 4R7
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Date, heure, minute de certification : **2023-05-29 10:06**

**Critère de recherche** Nom d'organisme : **CYXTERA COMMUNICATIONS CANADA, ULC**

**Critère de sélection** Nom d'organisme :  
**CYXTERA COMMUNICATIONS CANADA ULC**  
Code Postal :  
**T2P4K9**

Fiche	Inscription	Date	h:min
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 23-0553920-0001	2023-05-12	09:00
002	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 23-0552626-0001	2023-05-11	14:12



Date, heure, minute de certification : 2023-05-29 10:06

Critère de recherche Nom d'organisme : CYXTERA COMMUNICATIONS CANADA, ULC

Critère de sélection Nom d'organisme : CYXTERA COMMUNICATIO... Code Postal : T2P4K9

### Fiche 001 - Détail de l'inscription 1 (de 1)

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
23-0553920-0001	2023-05-12 09:00	2033-05-12
HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION		

#### PARTIES

##### Titulaire

WILMINGTON SAVINGS FUND SOCIETY, FSB  
500 Delaware Avenue, Wilmington, Delaware USA 19801

##### Constituant

CYXTERA COMMUNICATIONS CANADA, ULC  
1600-421, 7th Ave SW, Calgary, Alberta T2P 4K9

#### BIENS

L'universalité des biens meubles du Constituant, corporels et incorporels, présents et à venir, de quelque nature qu'ils soient et où qu'ils puissent être situés.

#### Définitions:

"Acte" signifie l'acte d'hypothèque mentionné à la section "Référence à l'acte constitutif";

"Constituant" désigne CYXTERA COMMUNICATIONS CANADA, ULC, et comprend tout successeur ou cessionnaire autorisé de celle-ci;

"Titulaire" désigne WILMINGTON SAVINGS FUND SOCIETY, FSB, en sa qualité de fondé de pouvoir au sens de l'article 2692 du Code Civil du Québec, et comprend tout successeur ou cessionnaire de celle-ci en cette capacité;

#### MENTIONS

##### Somme de l'hypothèque

100 000 000\$ avec intérêt au taux de 25% l'an, à compter de la date de l'Acte.

L'hypothèque est constituée en faveur du fondé de pouvoir (art. 2692 C.c.)

##### Référence à l'acte constitutif

Forme de l'acte : Notarié en minute

Date : 2023-05-11

Lieu : Montréal, Québec

N° de minute : 6974

Nom du notaire : FEBBRAIO, Angelo

##### Autres mentions :

Le Titulaire autorise le Constituant à percevoir les créances hypothéquées arrivées à échéance et exigibles, selon les termes et conditions des conventions attestant de telles créances.



**AVIS D'ADRESSE**

N° 057478



Date, heure, minute de certification : **2023-05-29 10:06**

**Critère de recherche** Nom d'organisme : CYXTERA COMMUNICATIONS CANADA, ULC

**Critère de sélection** Nom d'organisme : CYXTERA COMMUNICATIO... Code Postal : T2P4K9

**Fiche 002 - Détail de l'inscription 1 (de 1)**

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
23-0552626-0001	2023-05-11 14:12	2033-05-11
HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION		

**PARTIES**

**Titulaire**

CITIBANK, N.A.

388 Greenwich Street, 12th Floor, New York, NY 10013

**Constituant**

CYXTERA COMMUNICATIONS CANADA, ULC

1600-421, 7th Ave SW, Calgary, Alberta

T2P 4K9

**BIENS**

L'universalité des biens meubles du Constituant, corporels et incorporels, présents et à venir, de quelque nature qu'ils soient et où qu'ils puissent être situés.

Définitions:

« Constituant » désigne Cyxtera Communications Canada, ULC, et comprend tout successeur ou cessionnaire autorisé de celle-ci;

« Titulaire » désigne Citibank, N.A., en sa qualité de fondé de pouvoir au sens de l'article 2692 du Code Civil du Québec, et comprend tout successeur ou cessionnaire de celle-ci en cette capacité.

**MENTIONS**

**Somme de l'hypothèque**

2 000 000 000 \$ avec intérêt au taux de 25% l'an, à compter de la date de l'acte ici publié.

L'hypothèque est constituée en faveur du fondé de pouvoir (art. 2692 C.c.)

**Référence à l'acte constitutif**

Forme de l'acte : Notarié en minute

Date : 2023-05-11

Lieu : Montréal, Québec

N° de minute : 6975

Nom du notaire : FEBBRAIO Angelo

**Autres mentions :**

Le Titulaire autorise le Constituant à percevoir les créances hypothéquées arrivées à échéance et exigibles, selon les termes et conditions des conventions attestant de telles créances.

**AVIS D'ADRESSE**

N° 057962



This is **Exhibit "N"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



**Search ID #:** Z16188800

**Transmitting Party**

ELDOR-WAL REGISTRATIONS (1987) LTD.

1200, 10123 99 st NW  
EDMONTON, AB T5J 3H1

Party Code: 50073881  
Phone #: 780 429 5969  
Reference #:

**Search ID #:** Z16188800

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:40

**Business Debtor Search For:**

CYXTERA CANADA TRS, ULC

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.





**Search ID #:** Z16188800

**Business Debtor Search For:**

CYXTERA CANADA TRS, ULC

**Search ID #:** Z16188800

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:40

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Registration Number: 23051111763

Registration Type: SECURITY AGREEMENT

Registration Date: 2023-May-11

Registration Status: Current

Expiry Date: 2028-May-11 23:59:59

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Exact Match on:

Debtor

No: 1

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**Debtor(s)**

**Block**

**Status**

1 CYXTERA CANADA TRS, ULC  
2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES, FL 33134

Current

**Secured Party / Parties**

**Block**

**Status**

1 CITIBANK, N.A., AS AGENT  
388 GREENWICH STREET, 12TH FLOOR  
NEW YORK, NY 10013  
Email: GLOriginOps@citigroup.com

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the Debtor

Current



**Search ID #:** Z16188800

**Business Debtor Search For:**

CYXTERA CANADA TRS, ULC

**Search ID #:** Z16188800

**Date of Search:** 2023-May-26

**Time of Search:** 09:04:40

Registration Number: 23051111783

Registration Type: SECURITY AGREEMENT

Registration Date: 2023-May-11

Registration Status: Current

Expiry Date: 2028-May-11 23:59:59

Exact Match on:

Debtor

No: 1

**Debtor(s)**

**Block**

**Status**

1 CYXTERA CANADA TRS, ULC  
2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES, FL 33134

Current

**Secured Party / Parties**

**Block**

**Status**

1 WILMINGTON SAVINGS FUND SOCIETY, FSB, AS COLLATERAL AGENT  
WSFS INSTITUTIONAL SERVICES 500 DELAWAR  
WILMINGTON, DE 19801  
Email: jmcnichol@wsfsbank.com

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after-acquired personal property of the Debtor

Current

Result Complete



## Business Debtor - "CYXTERA CANADA TRS, ULC"

**Search Date and Time:** May 29, 2023 at 12:49:23 pm Pacific time  
**Account Name:** ELDOR-WAL REGISTRATIONS (1987) LTD.

### TABLE OF CONTENTS

2 Matches in 2 Registrations in Report

Exact Matches: 2 (\*)

Total Search Report Pages: 5

	Base Registration	Base Registration Date	Debtor Name	Page
1	<a href="#">529468P</a>	May 11, 2023	* CYXTERA CANADA TRS, ULC	<a href="#">2</a>
2	<a href="#">529471P</a>	May 11, 2023	* CYXTERA CANADA TRS, ULC	<a href="#">4</a>



## Base Registration Number: 529468P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	May 11, 2023 at 8:11:24 am Pacific time
<b>Current Expiry Date and Time:</b>	May 11, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of May 29, 2023 at 12:49:23 pm Pacific time)

### Secured Party Information

**CITIBANK, N.A., AS AGENT**

#### Address

388 GREENWICH STREET, 12TH FLOOR  
NEW YORK NY  
10013 United States of America

### Debtor Information

**CYXTERA CANADA TRS, ULC**

#### Address

2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES FL  
33134 United States of America

### Vehicle Collateral

None

### General Collateral

**Base Registration General Collateral:**

All present and after-acquired personal property of the Debtor



## Original Registering Party

**ELDOR-WAL REGISTRATIONS (1987)  
LTD.**

**Address**

1200, 10123 99 STREET NW  
EDMONTON AB  
T5J 3H1 Canada





## Base Registration Number: 529471P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	May 11, 2023 at 8:11:59 am Pacific time
<b>Current Expiry Date and Time:</b>	May 11, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of May 29, 2023 at 12:49:23 pm Pacific time)

### Secured Party Information

**WILMINGTON SAVINGS FUND  
SOCIETY, FSB, AS COLLATERAL  
AGENT**

#### Address

WSFS INSTITUTIONAL SERVICES 500 DELAWARE AVE  
WILMINGTON DE  
19801 United States of America

### Debtor Information

**CYXTERA CANADA TRS, ULC**

#### Address

2333 PONCE DE LEON BLVD., SUITE 900  
CORAL GABLES FL  
33134 United States of America

### Vehicle Collateral

None

### General Collateral

**Base Registration General Collateral:**

All present and after-acquired personal property of the Debtor



## Original Registering Party

**ELDOR-WAL REGISTRATIONS (1987)  
LTD.**

**Address**

1200, 10123 99 STREET NW  
EDMONTON AB  
T5J 3H1 Canada





PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 06/01/2023  
CCCL369 DISPLAY 1C REGISTRATION - SCREEN 1 16:07:43  
ACCOUNT : 009233-0001 FAMILY : 1 OF 2 ENQUIRY PAGE : 1 OF 3  
FILE CURRENCY : 31MAY 2023  
SEARCH : BD : CYXTERA CANADA TRS, ULC

00 FILE NUMBER : 793221372 EXPIRY DATE : 11MAY 2028 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20230511 1146 1590 3071 REG TYP: P PPSA REG PERIOD: 5  
02 IND DOB : IND NAME:  
03 BUS NAME: CYXTERA CANADA TRS, ULC

04 ADDRESS : 2333 PONCE DE LEON BLVD., SUITE 900 OCN :  
CITY : CORAL GABLES PROV: FL POSTAL CODE: 33134  
05 IND DOB : IND NAME:  
06 BUS NAME:

07 ADDRESS : OCN :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
CITIBANK, N.A., AS AGENT

09 ADDRESS : 388 GREENWICH STREET, 12TH FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10013  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X X X X  
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: GOWLING WLG (CANADA) LLP - OTTAWA (BG)

17 ADDRESS : 2600-160 ELGIN STREET  
CITY : OTTAWA PROV: ON POSTAL CODE: K1P 1C3



00 FILE NUMBER : 793221939 EXPIRY DATE : 11MAY 2028 STATUS :

01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
REG NUM : 20230511 1200 1590 3080 REG TYP: P PPSA REG PERIOD: 5

02 IND DOB : IND NAME:

03 BUS NAME: CYXTERA CANADA TRS, ULC

OCN :

04 ADDRESS : 2333 PONCE DE LEON BLVD., SUITE 900  
CITY : CORAL GABLES PROV: FL POSTAL CODE: 33134

05 IND DOB : IND NAME:

06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
WILMINGTON SAVINGS FUND SOCIETY, FSB, AS COLLATERAL AGENT

09 ADDRESS : WSFS INSTITUTIONAL SERVICES  
CITY : WILMINGTON PROV: DE POSTAL CODE: 19801

CONS. MV DATE OF OR NO FIXED

GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X X X X X  
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: GOWLING WLG (CANADA) LLP - OTTAWA (BG)

17 ADDRESS : 2600-160 ELGIN STREET  
CITY : OTTAWA PROV: ON POSTAL CODE: K1P 1C3

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PSSME02                    PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM                    06/01/2023  
CCCL369                    DISPLAY 1C REGISTRATION - SCREEN 1                    16:07:48  
ACCOUNT : 009233-0001                    FAMILY :    2 OF    2                    ENQUIRY PAGE :    3 OF    3  
FILE CURRENCY : 31MAY 2023  
SEARCH : BD : CYXTERA CANADA TRS, ULC

00 FILE NUMBER : 793221939    EXPIRY DATE : 11MAY 2028 STATUS :  
01 CAUTION FILING :                    PAGE : 002 OF 2                    MV SCHEDULE ATTACHED :  
    REG NUM : 20230511 1200 1590 3080 REG TYP:                    REG PERIOD:  
02 IND DOB :                    IND NAME:  
03 BUS NAME:                    OCN :  
  
04 ADDRESS :  
    CITY :                    PROV:                    POSTAL CODE:  
05 IND DOB :                    IND NAME:  
06 BUS NAME:                    OCN :  
  
07 ADDRESS :  
    CITY :                    PROV:                    POSTAL CODE:  
08 SECURED PARTY/LIEN CLAIMANT :  
  
09 ADDRESS : 500 DELAWARE AVE.  
    CITY :                    PROV:                    POSTAL CODE:  
    CONS.                    MV                    DATE OF    OR NO FIXED  
    GOODS INVTRY. EQUIP    ACCTS    OTHER    INCL    AMOUNT    MATURITY    MAT DATE  
10                    YEAR MAKE                    MODEL                    V.I.N.  
11  
12  
GENERAL COLLATERAL DESCRIPTION  
13  
14  
15  
16 AGENT:  
17 ADDRESS :  
    CITY :                    PROV:                    POSTAL CODE:

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END OF REPORT



Date, heure, minute de certification : **2023-06-01 10:29**

Critère de recherche      Nom d'organisme : **CYXTERA CANADA TRS, ULC**

**Résultat exact (0)**

Aucun droit n'est inscrit au registre sous le nom consulté. Pour une recherche complète, il est recommandé de consulter aussi les résultats apparaissant sous l'onglet « Nom présentant des similarités », s'il y a lieu.



Date, heure, minute de certification : **2023-06-01 10:29**

Critère de recherche      Nom d'organisme : **CYXTERA CANADA TRS, ULC**

**Noms présentant des similarités (296)**

Nom	Code postal	Nombre de fiches détaillées
<input type="checkbox"/> 1204086 CANADA ULC	H3C 1N4	
<input type="checkbox"/> 35601 CUMMINS CANADA ULC	B3J 2X2	
<input type="checkbox"/> ABB ELECTRIFICATION CANADA ULC	H9R 1B4	
<input type="checkbox"/> ABB ELECTRIFICATION CANADA ULC	T6B 2S1	
<input type="checkbox"/> ABB ELECTRIFICATIONS CANADA ULC	J3B 3G5	
<input type="checkbox"/> AIT CANADA ULC	B3J 3N2	
<input type="checkbox"/> ALDERWOODS GROUP CANADA ULC	M2J 5C2	
<input type="checkbox"/> ALIGN AEROSPACE CANADA ULC	B3J 2X2	
<input type="checkbox"/> ALPHABRODER CANADA ULC	V6C 2X8	
<input type="checkbox"/> ALSTOM GRID CANADA ULC	V7X 1L3	
<input type="checkbox"/> ALSTOM RESEAU CANADA ULC	V7X 1L3	
<input type="checkbox"/> AMEREX CANADA ULC	B3J 3N2	
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<input type="checkbox"/> CANADA INC	J4B 4B8	
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+	CARLISLE CANADA ULC	H9R 1A5
+	CASCADES CANADA ULC	H1J 0A6
+	CASCADES CANADA ULC	H3A 1G1
+	CASCADES CANADA ULC	H8S 2K9
+	CASCADES CANADA ULC	J0A 1B0
+	CASCADES CANADA ULC	J3V 6R7
+	CASCADES CANADA ULC	J4Y 3B7
+	CASCADES CANADA ULC	J5R 1C3
+	CASCADES CANADA ULC	N1H 6N9
+	CASCADES CANADA ULC	T2P 3N9
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+	CATERPILLAR MINING CANADA ULC	T5S 1M8
+	CB TRESTLES CANADA ULC	H4T 1W7
+	CELANESE CANADA ULC	G3B 0C9
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+	CEVA LOGISTICS CANADA ULC	H4S 1N7
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+	CULLIGAN OF CANADA ULC	N3H 4R7
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+	CYXTERA COMMUNICATIONS CANADA ULC	T2P 4K9
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+	DIONO CANADA ULC	V6E 4N7
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+	DNOW CANADA ULC	T6P 1P6
+	DORMAN PRODUCTS CANADA ULC	J7H 0E2



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<input type="checkbox"/>	PEPSICO CANADA ULC	L4W 0C3
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<input type="checkbox"/>	PEPSICO CANADA ULC	L6W 4T9
<input type="checkbox"/>	PEPSICO CANADA ULC	N3H 4V8
<input type="checkbox"/>	PEPSICO CANADA ULC	T1H 5K8
<input type="checkbox"/>	PEPSICO CANADA ULC	T2B 3L8
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<input type="checkbox"/>	PIONEER ELECTROGROUP CANADA ULC	J2J 0H6
<input type="checkbox"/>	PLAINS MIDSTREAM CANADA ULC	
<input type="checkbox"/>	PLAINS MIDSTREAM CANADA ULC	T2P 0A7
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<input type="checkbox"/>	PLAINS MIDSTREAM CANADA ULC	V6C 2B5
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<input type="checkbox"/>	POWERTRAIN CANADA ULC	B3J 2X2
<input type="checkbox"/>	PRETIUM CANADA PACKAGING ULC	H4S 1R2
<input type="checkbox"/>	PRETIUM CANADA PACKAGING ULC	H4T 1T1
<input type="checkbox"/>	PRETIUM CANADA PACKAGING ULC	V7X 1L3
<input type="checkbox"/>	PREVENTIA TECHNOLOGIES CANADA ULC	J7Z 2P3
<input type="checkbox"/>	PS CANADA COMPANY ULC	T2P 5H1
<input type="checkbox"/>	QSI FINANCE CANADA ULC	L4K 2X2
<input type="checkbox"/>	QSI FINANCE CANADA ULC	L4V 1R1
<input type="checkbox"/>	QSI FINANCE CANADA ULC	V5C 6C6
<input type="checkbox"/>	QSI FINANCE CANADA ULC	V6C 0A3
<input type="checkbox"/>	QSI FINANCE CANADA ULC	V8W 2E1
<input type="checkbox"/>	QSIP CANADA ULC	B3J 0J2
<input type="checkbox"/>	QSIP CANADA ULC	G9H 2V8
<input type="checkbox"/>	QUEST EVENTS CANADA ULC	L5T 2N1
<input type="checkbox"/>	REGAL BELOIT CANADA ULC	H4R 2N9
<input type="checkbox"/>	REGAL BELOIT CANADA ULC	T2P 5C5
<input type="checkbox"/>	RENO TRS	J0L 1N0
<input type="checkbox"/>	RENO TRS	J5A 2A9
<input type="checkbox"/>	RESEAU SOLUTIONS CANADA ULC	V6E 0C5
<input type="checkbox"/>	RGIS CANADA ULC	T2P 4K9
<input type="checkbox"/>	ROCKPORT CANADA ULC	L4H 3N2
<input type="checkbox"/>	RYAM CANADA HOLDINGS ULC	J0Z 3R0
<input type="checkbox"/>	SABIC POLYMERLAND CANADA ULC	T5J 3G1
<input type="checkbox"/>	SAFWAY SERVICES CANADA ULC	T2M 3V7



<input type="checkbox"/>	SAFWAY SERVICES CANADA ULC	T2P 4J8
<input type="checkbox"/>	SAFWAY SERVICES CANADA ULC	T8L 2S3
<input type="checkbox"/>	SANDALWOOD MANAGEMENT CANADA ULC	H3B 3V2
<input type="checkbox"/>	SANDALWOOD MANAGEMENT CANADA ULC	H3E 1J4
<input type="checkbox"/>	SANDLEWOOD MANAGEMENT CANADA ULC	H3E 1J4
<input type="checkbox"/>	SBA CANADA ULC	T2P 5C5
<input type="checkbox"/>	SHIRE PHARMA CANADA ULC	H4S 2C9
<input type="checkbox"/>	SIGNODE CANADA ULC	B3J 2X2
<input type="checkbox"/>	SOLENIS CANADA ULC	B3J 3N2
<input type="checkbox"/>	SOLENIS CANADA ULC	H1K 4E4
<input type="checkbox"/>	SOLENIS CANADA ULC	L7R 2J7
<input type="checkbox"/>	SOLENIS CANADA ULC	M5L 1B9
<input type="checkbox"/>	SPARTA CANADA ACQUISITION ULC	
<input type="checkbox"/>	SPICERS CANADA ULC	H1J 1L8
<input type="checkbox"/>	SPICERS CANADA ULC	H1J 2Y2
<input type="checkbox"/>	SPICERS CANADA ULC	L4L 0B9
<input type="checkbox"/>	SPICERS CANADA ULC	V6B 0M3
<input type="checkbox"/>	SPICERS CANADA ULC	V6Z 2M4
<input type="checkbox"/>	SPRAGUE RESOURCES CANADA ULC	J6V 1S8
<input type="checkbox"/>	SPRINGS CANADA PRODUCTS ULC	V6C 2X8
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<input type="checkbox"/>	STAPLES CANADA ULC	L4B 4W3
<input type="checkbox"/>	STAPLES CANADA ULC	V6C 2X8
<input type="checkbox"/>	STAPLES CANADA ULC	V6X 2X8
<input type="checkbox"/>	STERIS CANADA SALES ULC	L4B 4W2
<input type="checkbox"/>	STERIS CANADA SALES ULC	L4V 1J7
<input type="checkbox"/>	STERIS CANADA SALES ULC	L4Z 3E2
<input type="checkbox"/>	STERIS CANADA ULC	G1C 8A3
<input type="checkbox"/>	STGENETICS CANADA ULC	J2S 3V4
<input type="checkbox"/>	STREETSCAN CANADA ULC	H2W 1B6
<input type="checkbox"/>	STRYKER CANADA ULC	L5C 4R3
<input type="checkbox"/>	STRYKER CANADA ULC	L8B 1W2
<input type="checkbox"/>	STYROCHEM CANADA ULC	T2P 5C5
<input type="checkbox"/>	TARGETCO CANADA ULC	T2P 4J8
<input type="checkbox"/>	TD WILLIAMSON CANADA ULC	T2P 0C1
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<input type="checkbox"/>	TELEGLOBE CANADA ULC	B3J 2X2
<input type="checkbox"/>	TERADATA CANADA ULC	L4V 1R8
<input type="checkbox"/>	TESLA MOTORS CANADA ULC	B3J 3R7
<input type="checkbox"/>	TESLA MOTORS CANADA ULC	M3A 1C6
<input type="checkbox"/>	THE HILLMAN GROUP CANADA ULC	H7S 2J4
<input type="checkbox"/>	THE HILLMAN GROUP CANADA ULC	M1L 4N3
<input type="checkbox"/>	THE HILLMAN GROUP CANADA ULC	M1X 0C6
<input type="checkbox"/>	THONA CANADA ULC	B3J 3N2



<input checked="" type="checkbox"/>	TIC CANADA 2002 ULC	T5S 1G3
<input checked="" type="checkbox"/>	TIC CANADA ULC	T5S 1G3
<input checked="" type="checkbox"/>	TIMKEN CANADA GP ULC	T2P 4K9
<input checked="" type="checkbox"/>	TNT CANADA ULC	H4S 1N7
<input checked="" type="checkbox"/>	TOP MARKS CANADA ULC	V6C 2X8
<input checked="" type="checkbox"/>	TORRINGTON CANADA ULC	N5P 1G5
<input checked="" type="checkbox"/>	TRANE CANADA ULC	H4S 1H3
<input checked="" type="checkbox"/>	TRANE CANADA ULC	M1W 2P3
<input checked="" type="checkbox"/>	TRANE CANADA ULC	V6C 0A3
<input checked="" type="checkbox"/>	TREE OF LIFE CANADA ULC	T2P 4K9
<input checked="" type="checkbox"/>	TREK BICYCLE CANADA ULC	V6C 3L2
<input checked="" type="checkbox"/>	TRS 2000	H4S 1J2
<input checked="" type="checkbox"/>	TRS COLD LOGISTIC INC	J0E 1A0
<input checked="" type="checkbox"/>	TUBOSCOPE VETCO CANADA ULC	T5J 3S9
<input checked="" type="checkbox"/>	TUBOSCOPE VETCO CANADA ULC	T5J 3V5
<input checked="" type="checkbox"/>	TUYAUTERIES CANADA ULC	T2P 4K9
<input checked="" type="checkbox"/>	TYCO ELECTRONICS CANADA ULC	L3R 1E1
<input checked="" type="checkbox"/>	URGO HOTELS CANADA ULC	J8E 1C9
<input checked="" type="checkbox"/>	USQ CANADA RAIL ULC	
<input checked="" type="checkbox"/>	USQ CANADA RAIL ULC	V7X 1T2
<input checked="" type="checkbox"/>	VACUUM TRUCKS OF CANADA ULC	T2P 1G1
<input checked="" type="checkbox"/>	VARCO CANADA ULC	T5J 3V5
<input checked="" type="checkbox"/>	VARCO CANADA ULC	T9E 7E3
<input checked="" type="checkbox"/>	VECTOR CANADA ACQUISITION ULC	
<input checked="" type="checkbox"/>	VERTIV CANADA ULC	B3J 3N2
<input checked="" type="checkbox"/>	VESSEL CANADA ENTERPRISES ULC	V6B 1G1
<input checked="" type="checkbox"/>	VIAVI SOLUTIONS CANADA ULC	V6C 2B5
<input checked="" type="checkbox"/>	WD PARTNERS CANADA ULC	L4L 1T9
<input checked="" type="checkbox"/>	WEIGH TRONIX CANADA ULC	H9R 4R7
<input checked="" type="checkbox"/>	WELLA BEAUTY CANADA ULC	M6K 3P6
<input checked="" type="checkbox"/>	WHITECAP ENERGY CANADA ULC	T2P 1G1
<input checked="" type="checkbox"/>	WILSONART CANADA ULC	B3J 3N2
<input checked="" type="checkbox"/>	WILSONART CANADA ULC	H8R 3H7
<input checked="" type="checkbox"/>	WILSONART CANADA ULC	L5T 2S5
<input checked="" type="checkbox"/>	WINFIELD UNITED CANADA ULC	S7T 0J1
<input checked="" type="checkbox"/>	WORLEY CANADA ULC	T2C 3E7
<input checked="" type="checkbox"/>	XTO ENERGY CANADA ULC	T2C 5N1
<input checked="" type="checkbox"/>	XTO ENERGY CANADA ULC	T2P 3M9
<input checked="" type="checkbox"/>	ZOLA WEDDINGS CANADA ULC	H3B 0G4
<input checked="" type="checkbox"/>	ZOLA WEDDINGS CANADA ULC	H3B 2E3
<input checked="" type="checkbox"/>	ZOLA WEDDINGS CANADA ULC	H3G 2C1
<input checked="" type="checkbox"/>	ZOLA WEDDINGS CANADA ULC	V6C 0A3



This is **Exhibit "O"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



## Cyxtera Communications Canada, ULC

### Alberta

#### Alberta Personal Property Registry

A business debtor search of the Alberta Personal Property Registry dated May 29, 2023 revealed the following registration against the Company:

NOTE	Inexact Match on Debtor
Registration No.	19100919536
Registration Type	SALE OF GOODS OR FACTORS ACT
Registration Date	October 9, 2019
Expiry	October 9, 2044
Debtors	Cyxtera Communications Canada, Inc.
Secured Party	1. Compagnie de services Financiers Hewlett – Packard Canada 2. Hewlett-Packard financial services Canada Company
Collateral: Serial Number Goods	None
General Collateral:	ALL PRESENT AND FUTURE GOODS, SOFTWARE AND OTHER PERSONAL PROPERTY NOW OR HEREAFTER FINANCED OR LEASED BY SECURED PARTY TO DEBTOR, WHETHER OR NOT BEARING THE NAME "HEWLETT-PACKARD", "HP" OR "HEWLETT PACKARD ENTERPRISE" OR ANOTHER TRADE MARK OR TRADE NAME OWNED BY A MEMBER OF THE CORPORATE FAMILY OF ANY OF THE FOREGOING, INCLUDING WITHOUT LIMITATION ALL COMPUTER, TELECOMMUNICATIONS, PRINTING, IMAGING, COPYING, SCANNING, PROJECTION, GRAPHICS, NETWORKING, STORAGE AND POINT OF SALE EQUIPMENT, INCLUDING WITHOUT LIMITATION SERVERS, LAPTOPS, DESKTOPS, TABLETS, SMART PHONES AND OTHER HAND HELD DEVICES, PRINTERS, PRINTING PRESSES, SCANNERS, FAX MACHINES, DIGITAL PHOTOGRAPHY AND IMAGING DEVICES, INK, TONER, WORKSTATIONS, PLATFORM CARTS, TAPE LIBRARIES, ATMS, CASH REGISTERS; AND ANY AND ALL ATTACHMENTS, ACCESSORIES, ADDITIONS, GENERAL INTANGIBLES, SUBSTITUTIONS, PRODUCTS, REPLACEMENTS, RENTALS, MANUALS AND ANY RIGHT, TITLE OR INTEREST IN ANY SOFTWARE USED TO OPERATE OR OTHERWISE INSTALLED IN ANY OF THE FOREGOING (INCLUDING WITHOUT LIMITATION NETWORKING SOLUTIONS, SYSTEM SECURITY AND STORAGE SOLUTIONS, CLOUD SOLUTIONS, AND ENTERPRISE SOLUTIONS), FURNITURE AND FIXTURES, RACKS, ENCLOSURES AND NODES; AND ALL PROCEEDS OF THE FOREGOING INCLUDING WITHOUT LIMITATION, MONEY, CHATTEL PAPER, INTANGIBLES, GOODS, DOCUMENTS OF TITLE, INSTRUMENTS, INVESTMENT PROPERTY, FIXTURES, LICENSES, SUBSTITUTIONS, ACCOUNTS RECEIVABLE,



	RENTAL AND LOAN CONTRACTS, ALL PERSONAL PROPERTY RETURNED, TRADED-IN OR REPOSSESSED AND ALL INSURANCE PROCEEDS AND ANY OTHER FORM OF PROCEEDS.
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NOTE	Inexact Match on Debtor
Registration No.	22081726648
Registration Type	SECURITY AGREEMENT
Registration Date	August 17, 2022
Expiry	August 17, 2027
Debtors	Cyxtera Communications Canada, Inc.
Secured Party	Liberty Commercial Finance
Collateral: Serial Number Goods	None
General Collateral:	<p>1. ALL OF THE DEBTOR'S INTERESTS IN THE FOLLOWING EQUIPMENT: 13 COMPU-AIRE CRAHS, SYSTECON PACKAGE AND GUENTNER FLUID COOLER; CONTRACT WORK INCLUDING BUT NOT LIMITED TO THE FOLLOWING: INSURANCE, PARTNERING, PROJECT MANAGEMENT, DRAWING AND DOCUMENTATION, SAFETY SIGNAGE, PROJECT SIGNAGE, FIRE PROTECTION, SECURITY, BUILDING PERMITS, INTERNET, CELLULAR, FURNITURE, COMPUTERS, ON SITE TRAILERS, SANITATION ROOMS, TOOLS, STAFF, WASTE MANAGEMENT, SDI, ALLOWANCES AND CONTINGENCIES; 1 QTY LOT: EATON 2 - TYPE 2-12" FLANGES: POW-R-WAY III: AFTERMARKET, POW-R-WAY III, 3 PHASE, 4 WIRE, 100% NEUTRAL, 2500A, UL/CSA-CERTIFICATION, 347/600V, ALUMINUM - TIN PLATED BUS, 50% INTERNAL/ISOLATED GROUND LIST OF MATERIALS 2 12 INCH FLANGES AND 2 BRIDGE JOINTS PER DRAWING DATE 6/21/21; 1 EA LOT: EATONINDU 1 - TYPE CD-D1: P4L3C12-36 1200A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 1200A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED XSPACE: 28X, REMAINING X-SPACE: 28X, MAX X-SPACE FOR BRANCH DEVICES: 36X 1 - TYPE CD-D1: SPRINKLERPROOF ENCLOSURE: SP3890P 1 - TYPE CD-D2: P4L3C12- 36 1200A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 1200A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 28X, REMAINING X-SPACE: 28X, MAX X-SPACE FOR BRANCH DEVICES: 36X 1 – TYPE CD-D2: SPRINKLERPROOF ENCLOSURE: SP3873P;</p> <p>2. 1 EA LOT: EATONINDU 1 - TYPE MP-D1: P4L3C4-28 400A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 400A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 9X, REMAINING X-SPACE: 9X, MAX X-SPACE FOR BRANCH DEVICES: 28X 1 - TYPE DP-D1: P4L3C4-28; 1 EA LOT: EATONINDU 1 - TYPE MP-D2: P4L3C4-28 400A, FULLY RATED, 600V 3PH 3W,</p>



	<p>SILVER PLATED COPPER BUS, 65KAIC, 400 A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED XSPACE: 9X, REMAINING X-SPACE: 9X, MAX X-SPACE FOR BRANCH DEVICES: 28X 1 - TYPE MP-D1/D2: P4L3C2-28 250A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 250A, MAIN LUGS ONLY (BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 21X, REMAINING X-SPACE: 21X, MAX X-SPACE FOR BRANCH DEVICES:28X 1 - TYPE MP-D2/D1: P4L3C2-28 250A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 250A, MAIN LUGS ONLY (BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 21X, REMAINING X-SPACE: 21X, MAX X-SPACE FOR BRANCH DEVICES: 28X 1 - TYPE MP-D1/D2-2: P4L3C2-28 250A, FULLY RATED, 600V 3PH 3W, SILVER PLATED COPPER BUS, 65KAIC, 250A, MAIN LUGS ONLY(BOTTOM FED), SURFACE MOUNTED USED X-SPACE: 21X, REMAINING X-SPACE: 21X, MAX X-SPACE FOR BRANCH DEVICES: 28X; 1 EA LOT: EATONINDU 1 - TYPE TSB-D: CANADIAN POW-R-LINE C, FRONT ACCESS/ FRONT AND REAR ALIGN, SPRINKLERPROOF, 600V 3-PHASE 3-WIRE, 2500SILVER FLASHED COPPER, MINIMUM INTERRUPTING RATING: 65KA, BUS BRACING RATING: 65KA; 1 EA LOT: EATONINDU 1 - TYPE PSB-D1: CANADIAN POW-R-LINE C, FRONT ACCESS/ FRONT AND REAR ALIGN, SPRINKLERPROOF, 600V 3-PHASE 3-WIRE, 2500SILVER FLASHED COPPER, MINIMUM INTERRUPTING RATING: 65KA, BUS BRACING RATING: 65KA;</p> <p>3. EA LOT: EATONINDU 1 - TYPE PSB-D2: CANADIAN POW-R-LINE C, FRONT ACCESS/ FRONT AND REAR ALIGN, SPRINKLERPROOF, 600V 3-PHASE 3-WIRE, 2500SILVER FLASHED COPPER, MINIMUM INTERRUPTING RATING: 65KA, BUS BRACING RATING: 65KA; 1 EA 2500 KVA 3 PHASE SUBSTATION TRANSFORMER; 1 EA 2500 KVA 3 PHASE SUBSTATION TRANSFORMER; 1 EA PDU; 4 QTY W5X24ONBH ACTIVITY NUMBER: WO-08899664 REPAIR ASSET PRODUCT SKU: E8TUPS555#2064508 ASSET SERIAL NUMBER: S14-10003; ACTIVITY NUMBER: WO-08988650 REPAIR CLOSE DATE: 22-NOV-21 ASSET PRODUCT SKU: E8TUPS555#2064508 ASSET SERIAL NUMBER: S14-10003 1 QTY 0J-98-18323-03 RELAY PHASE FAILURE &amp; UV 600V; 1 QTY BCPMA042S HDBPM, BRPWR, 3/4IN, 2X21 -100A,4 MCT, PVT-S4, INCLUDING ALL ADDITIONS, ACCESSIONS, AND ATTACHMENTS THERETO, AND ALL SUBSTITUTIONS AND REPLACEMENTS THEREOF. PROCEEDS: ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED GOODS, INVESTMENT PROPERTY, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES AND MONEY, ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT OF ALBERTA AND REGULATIONS THEREUNDER, DERIVED DIRECTLY OR INDIRECTLY FROM ANY DEALINGS WITH THE ORIGINAL COLLATERAL.</p>
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Registration No.	23051111749
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023



Expiry	May 11, 2028
Debtors	Cyxtera Communications Canada, ULC.
Secured Party	Citibank, N.A., as Agent
Collateral: Serial Number Goods	None
General Collateral:	All present and after-acquired personal property of the Debtor

Registration No.	23051111815
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Communications Canada, ULC.
Secured Party	Wilmington Savings Fund Society, FSB, as collateral agent
Collateral: Serial Number Goods	None
General Collateral:	All present and after-acquired personal property of the Debtor

## British Columbia

### British Columbia Personal Property Registry

A business debtor search of the British Columbia Personal Property Registry dated May 29, 2023 revealed the following registration against the Company:

Registration No.	529466P
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Communications Canada, ULC.
Secured Party	Citibank, N.A., As Agent
Collateral: Serial Number Goods	None



General Collateral:	All present and after-acquired personal property of the Debtor
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Registration No.	529469P
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Communications Canada, ULC.
Secured Party	Wilmington Savings Fund Society, FSB, as collateral agent
Collateral: Serial Number Goods	None
General Collateral:	All present and after-acquired personal property of the Debtor

## Quebec

### Quebec Personal Property Registry

A business debtor search of the Quebec Personal Property Registry dated May 29, 2023 revealed the following registration against the Company:

Registration No.	23-0553920-0001
Registration Type	-
Registration Date	May 12, 2023
Expiry	May 12, 2033
Debtors	Cyxtera Communications Canada, ULC.
Secured Party	Wilmington Savings Fund Society, FSB
Collateral: Serial Number Goods	-
General Collateral:	“L’universalite des biens meubles du Constituant, corporels et incorporels, presents et a venir, de quelque nature qu’ils soient et ou qu’ils puissent etre situes”

Registration No.	23-0552626-0001
Registration Type	-
Registration Date	May 11, 2023



Expiry	May 11, 2033
Debtors	Cyxtera Communications Canada, ULC.
Secured Party	Citibank, N.A.
Collateral: Serial Number Goods	-
General Collateral:	"L'universalite des biens meubles du Constituant, corporels et incorporels, presents et a venir, de quelque nature qu'ils soient et ou qu'ils puissent etre situes"

## Ontario

### Ontario Personal Property Registry

A business debtor search of the Ontario Personal Property Registry dated May 29, 2023 revealed the following registration against the Company:

Registration No.	20230511 1146 1590 3070
Registration Type	P PPSA
Registration Date	-
Expiry	May 11, 2028
Debtors	Cyxtera Communications Canada, ULC
Secured Party	Citibank, N.A., as agent
Collateral: Serial Number Goods	
General Collateral:	Inventory / equipment / accounts / other

Registration No.	20230511 1159 1590 3079
Registration Type	P PPSA
Registration Date	-
Expiry	May 11, 2028
Debtors	Cyxtera Communications Canada, ULC
Secured Party	Wilmington Savings Funds Society, FSB, as collateral agent
Collateral: Serial Number Goods	



General Collateral:	Inventory / equipment / accounts / other
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**Cyxtera Canada TRS, ULC****Alberta****Alberta Personal Property Registry**

A business debtor search of the Alberta Personal Property Registry dated May 29, 2023 revealed the following registrations against the Company:

Registration No.	23051111763
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Canada TRS, ULC.
Secured Party	Citibank, N.A., as agent
Collateral: Serial Number Goods	None
General Collateral:	All present and after-acquired personal property of the Debtor
Additional Information	None

Registration No.	23051111783
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Canada TRS, ULC
Secured Party	Wilmington Savings Fund Society, FSB, As collateral agent
Collateral: Serial Number Goods	None



General Collateral:	All present and after-acquired personal property of the Debtor
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## British Columbia

### British Columbia Personal Property Registry

A business debtor search of the British Columbia Personal Property Registry dated May 29, 2023 revealed the following registrations against the Company:

Registration No.	529468P
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Canada TRS, ULC
Secured Party	Citibank, N.A., As Agent
Collateral: Serial Number Goods	None
General Collateral:	All present and after-acquired personal property of the Debtor

Registration No.	529471P
Registration Type	SECURITY AGREEMENT
Registration Date	May 11, 2023
Expiry	May 11, 2028
Debtors	Cyxtera Canada TRS, ULC
Secured Party	Wilmington Savings Fund Society, FSB, as collateral agent
Collateral: Serial Number Goods	None



General Collateral:	All present and after-acquired personal property of the Debtor
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## Quebec

### Quebec Personal Property Registry

Business debtor searches of the Quebec Personal Property Registry dated June 1, 2023 for the Company revealed the following result: No exact matches

## Ontario

### Ontario Personal Property Registry

Business debtor searches of the Ontario Personal Property Registry dated June 1, 2023 for the Company revealed the following result:

Registration No.	20230511 1146 1590 3071
Registration Type	P PPSA
Registration Date	-
Expiry	May 11, 2028
Debtors	Cyxtera Canada TRS, ULC
Secured Party	Citibank, N.A., as agent
Collateral: Serial Number Goods	-
General Collateral:	Inventory / Equipment / Accounts / Other / Incl

Registration No.	20230511 1200 1590 3080
Registration Type	P PPSA
Registration Date	-
Expiry	May 11, 2028
Debtors	Cyxtera Canada TRS, ULC



Secured Party	Wilmington Savings Funds Society, FSB, as collateral agent
Collateral: Serial Number Goods	-
General Collateral:	Inventory / Equipment / Accounts / Other / Incl



This is **Exhibit "P"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF ORDER  
(I) AUTHORIZING CYXTERA TECHNOLOGIES, INC. TO  
ACT AS FOREIGN REPRESENTATIVE, AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> 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.





TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing Cyxtera Technologies, Inc. (“Cyxtera”) to act as the Foreign Representative (as defined herein) on behalf of the Debtors’ estates in the Canadian Proceeding (as defined herein) and (b) granting related relief.

**Jurisdiction and Venue**

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

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

4. The bases for the relief requested herein are sections 105(a) and 1505 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

---

<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

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

### **Appointment of Foreign Representative**

7. Cyxtera Communications Canada, ULC and Cyxtera Canada TRS, ULC are Canadian unlimited liability corporations, and Cyxtera Canada LLC is a Delaware corporation



(collectively, the “Canada Debtors”). Cyxtera Communications Canada, ULC is the shareholder of Cyxtera Canada TRS, ULC, and Cyxtera Canada LLC is the shareholder of Cyxtera Communications Canada, ULC. Cyxtera, as the proposed Foreign Representative (as defined herein), will shortly seek ancillary relief in Canada on behalf of the Debtors’ estates in a court of proper jurisdiction in Alberta, Canada (the “Canadian Court”) pursuant to the Companies’ Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 (as amended, the “CCAA”). The purpose of the ancillary proceeding (the “Canadian Proceeding”) is to request that the Canadian Court recognize the Debtors’ chapter 11 cases as “foreign main proceedings” under the applicable provisions of the CCAA to, among other things, protect the Debtors’ assets and operations in Canada.

8. To commence the Canadian Proceeding, the Debtors require authority for a Debtor entity to act as the “foreign representative”<sup>3</sup> on behalf of the Debtors’ estates (the “Foreign Representative”). Therefore, the Debtors request authority to appoint Cyxtera as such Foreign Representative.

9. More specifically, section 46 of the CCAA provides in part:

- a. **Application for recognition of a foreign proceeding.** — A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.
- b. **Documents that must accompany application.** — . . . the application must be accompanied by . . . (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate

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<sup>3</sup> A “foreign representative” is defined in section 45(1) of the CCAA to mean “a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding.”



from the foreign court affirming the foreign representative's authority to act in that capacity . . .

CCAA, R.S.C., Ch. C-36, § 46 (1985) (Can.).

10. Accordingly, for Cyxtera to seek recognition as the Foreign Representative in the Canadian Proceeding, and thereby apply to have the Debtors' chapter 11 cases recognized by the Canadian Court, this Court must enter an order authorizing Cyxtera to act as the Foreign Representative in the Canadian Proceeding. If the order is granted, Cyxtera will be able to file the order with the Canadian Court as the instrument authorizing Cyxtera to act as the Foreign Representative pursuant to section 46 of the CCAA.

#### **Basis for Relief**

11. Section 1505 of the Bankruptcy Code provides that "[a] trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law." 11 U.S.C. § 1505. Further, section 1107(a) of the Bankruptcy Code provides, in relevant part, that "a debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter." 11 U.S.C. § 1107(a).

12. The Debtors respectfully submit that sections 1505 and 1107 of the Bankruptcy Code confer upon Cyxtera, as a debtor in possession, sufficient rights, powers, and duties to act as a Foreign Representative of the Debtors' estates in the Canadian Proceeding. To avoid any possible confusion or doubt regarding this authority and to comply with the requirements of section 46 of the CCAA, the Debtors seek entry of an order, pursuant to section 1505 of the Bankruptcy Code, explicitly authorizing Cyxtera to act as the Foreign Representative of the Debtors' estates in the Canadian Proceeding.



13. Authorizing Cyxtera to act as the Foreign Representative on behalf of the Debtors' estates in the Canadian Proceeding will allow for coordination between these chapter 11 cases and the Canadian Proceeding, and provide an effective mechanism to protect and maximize the value of the Debtors' assets and estates. Indeed, courts across various jurisdictions have granted relief similar to that requested herein in other large chapter 11 cases where a debtor has foreign assets or operations requiring a recognition proceeding. *See, e.g., In re David's Bridal, LLC*, Case No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023); *In re Armstrong Flooring, Inc.*, Case No. 22-10426 (MFW) (Bankr. D. Del. May 11, 2022); *In re Grupo Aeromexico, S.A.B. de C.V.*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y. July 1, 2020); *In re Skillsoft Corporation*, Case No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020); *In re LATAM Airlines Grp. S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. May 28, 2020). Accordingly, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

#### **Waiver of Memorandum of Law**

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

#### **Notice**

15. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors



operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

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

*[Remainder of page intentionally left blank.]*



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

Dated: June 4, 2023

*/s/ Michael D. Sirota*

---

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



**Exhibit A**

**Proposed Order**



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

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

**KIRKLAND & ELLIS LLP**

**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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



**ORDER (I) AUTHORIZING CYXTERA TECHNOLOGIES, INC.  
TO ACT AS FOREIGN REPRESENTATIVE, AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through five (5), is  
**ORDERED.**



(Page | 3)

Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*  
Case No. 23-14853 (JKS)  
Caption of Order: Order (I) Authorizing Cyxtera Technologies, Inc. to Act as Foreign Representative, and (II) Granting Related Relief

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Upon the motion (the “Motion”),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing Cyxtera Technologies, Inc. (“Cyxtera”) to act as foreign representative on behalf of the Debtors’ estates pursuant to section 1505 of the Bankruptcy Code 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 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 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.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



(Page | 4)

Debtors:	CYXTERA TECHNOLOGIES, INC., <i>et al.</i>
Case No.	23-14853 (JKS)
Caption of Order:	Order (I) Authorizing Cyxtera Technologies, Inc. to Act as Foreign Representative, and (II) Granting Related Relief

---

2. Cyxtera is hereby authorized to act as the Foreign Representative on behalf of the Debtors' estates in connection with the Canadian Proceeding. As Foreign Representative, Cyxtera shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including (a) seeking recognition of the Debtors' chapter 11 cases in the Canadian Proceeding, (b) requesting that the Canadian Court lend assistance to this Court in protecting the Debtors' property, and (c) seeking any other appropriate relief from the Canadian Court that Cyxtera deems just and proper in the furtherance of the protection of the Debtors' estates.

3. This Court requests the aid and assistance of the Canadian Court to recognize the Debtors' chapter 11 cases as a "foreign main proceeding" and Cyxtera as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

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

5. The Debtors shall serve by regular mail a copy of this Order and Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after entry of this Order.

6. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing Cyxtera Technologies, Inc. to Act as Foreign Representative, and (II) Granting Related Relief

---

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

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



This is **Exhibit "Q"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



Clerk's stamp:

COURT FILE NUMBER

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

APPLICANT

CYXTERA TECHNOLOGIES, INC.

DOCUMENT

**CONSENT TO ACT AS INFORMATION  
OFFICER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENT

Gowling WLG (Canada) LLP  
421 7 Ave SW Suite 1600  
Calgary, AB T2P 4K9  
Attn: Tom Cumming/Sam Gabor/Stephen Kroeger  
Ph. 1 403 298 1946  
File No.: A170537

**CONSENT TO ACT AS INFORMATION OFFICER**

Alvarez & Marsal Canada Inc., a Licensed Insolvency Trustee, hereby consents to act as court-appointed Information Officer in the within proceedings, if so appointed by this Honourable Court.

DATED this 2<sup>nd</sup> day of June, 2023.

**ALVAREZ & MARSAL CANADA INC.**



Per: \_\_\_\_\_

Orest Konowalchuk, LIT  
Senior Vice President

57039735\1



This is **Exhibit "R"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



---

A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
(I) RESTATING AND ENFORCING THE WORLDWIDE  
AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND  
IPSO FACTO PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING  
THE FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF**

---

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* protections of the Bankruptcy Code (as defined herein); (b) approving the form and manner of notice related thereto, substantially in the form attached as **Exhibit 2** to the Order (the “Notice”); and (c) granting related relief.

2. The Debtors further seek authority, but not direction, to translate this Motion, the Order, and/or the Notice into other languages to better inform creditors, governmental units, and interested parties of the relief requested herein.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 362, 365 and 525 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.



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

### **The Debtors’ Global Network**

7. As further described in the First Day Declaration, Cyxtera maintains a global network of assets and operations consisting of over sixty-five data center facilities in thirty-three markets across three continents as of the Petition Date. Cyxtera’s non-U.S. operations are facilitated through data center locations in Montreal, Toronto, Vancouver, London, Amsterdam, Frankfurt, Singapore, and Tokyo. Additionally, Cyxtera has numerous customers and partnerships across the world, including strategic partnerships in Asia Pacific, Southeast Asia, Europe, the Middle East, and Africa.

8. Certain Debtors may owe non-U.S. customers prepetition and ongoing obligations, which such parties may attempt to enforce in violation of the automatic stay. Additionally, upon the commencement of these chapter 11 cases, counterparties to certain leases and executory contracts could attempt to terminate such leases or contracts, including pursuant to *ipso facto* provisions in contravention of sections 362 and 365 of the Bankruptcy Code. Similarly, governmental units outside of the United States may deny, suspend, terminate, or otherwise place conditions upon certain licenses, permits, charters, franchises, or other similar grants held by a



Debtor that are required for the Debtors' ongoing business operations, in violation of sections 362 and 525 of the Bankruptcy Code.

9. Additionally, in the ordinary course of business, certain Debtors may rely upon, and incur obligations to, providers of services and other parties that are primarily (if not exclusively) based outside of the United States. Such creditors perform services, including, among other things, building, installation, and maintenance services at the Debtors' non-U.S. facilities that are integral to Cyxtera's global operations. Without continued support from their non-U.S. service providers, the Debtors would face severe interruptions to their daily operations. Concurrently herewith, the Debtors have filed the *Debtors' Motion for 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 (II) Granting Related Relief* (the "Critical Vendors Motion"). Pursuant to the Critical Vendors Motion, the Debtors seek authority to satisfy certain prepetition and postpetition claims of non-U.S. trade creditors as and when they come due. The Debtors anticipate that such relief will help deter parties from attempting to exercise remedies or take adverse action against the Debtors in non-U.S. jurisdictions on account of the commencement of these chapter 11 cases.

10. Non-U.S. creditors and contract counterparties operating in various jurisdictions may be unfamiliar with chapter 11 processes, including the scope of a debtor-in-possession's authority to operate its business and the import of the automatic stay. As discussed in detail in the Critical Vendors Motion, certain of the Debtors' non-U.S. creditors could attempt to enforce liens against the Debtors' assets. These creditors and others may attempt to take actions violating the automatic stay to the detriment of the Debtors, their estates, and other creditors.



11. The Debtors seek the relief requested herein out of an abundance of caution and to assist them in most effectively informing non-U.S. creditors of the broad protections offered by the Bankruptcy Code. For the avoidance of doubt, the Debtors do not seek to expand or enlarge the rights afforded to them under the Bankruptcy Code with this Motion. Instead, the Debtors seek to affirm those rights and believe that an order from this Court will help protect the Debtors against improper actions taken by, and provide clarity for, non-U.S. parties in interest.

### **Basis for Relief**

12. As a result of the commencement of these chapter 11 cases, and by operation of section 362 of the Bankruptcy Code, the automatic stay enjoins all persons from, among other things, taking any action to obtain possession of property of the estate or to exercise control over property of the estate. *See* 11 U.S.C. § 362(a)(3). The injunction contained in section 362 of the Bankruptcy Code is a core protection for debtors, providing them with a “breathing spell from creditors in order to permit the debtor to attempt repayment or reorganization.” *See In re Univ. Med. Ctr.*, 973 F.2d 1065, 1084 (3d Cir. 1992).

13. Given its fundamental importance to a debtor’s reorganization efforts, courts broadly construe the Bankruptcy Code’s automatic stay provisions. *See, e.g., In re All. Bus. & Cmty. Corp.*, 901 F.2d 325, 327 (3d Cir. 1990) (“The scope of the automatic stay is undeniably broad.”) (quoting H.R.Rep. No. 595, 95th Cong., 2d Sess. 340 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 6296); *In re NextWave Pers. Commc ’ns., Inc.*, 244 B.R. 253, 271 (Bankr. S.D.N.Y. 2000) (“The automatic stay is broadly written and broadly construed.”). As such, the automatic stay has been held to preclude unilateral actions by non-debtor parties to terminate contracts without court order, protecting a debtor’s property and contracts wherever located and whomever held by. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (holding that



while the debtor may enforce the terms of a contract against a creditor, the creditor is “precluded from . . . enforcing the contract terms” of an executory contract prior to the assumption by the debtor); *In re Mirant*, 440 F.3d 238, 252- 53 (5th Cir. 2006) (holding that the automatic stay prohibited termination of debtor’s contract without further relief).

14. Furthermore, section 362 of the Bankruptcy Code applies worldwide. *See Secs. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Bernard L. Madoff Inv. Secs. LLC)*, Case No. 08-1789 (BRL), 2012 WL 1570859 (S.D.N.Y. May 4, 2012) (upholding extraterritorial enforcement of the automatic stay and injunction barring foreign creditor’s lawsuit); *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998); *Nakash v. Zur (In re Nakash)*, 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996). The Bankruptcy Court has authority to fashion appropriate remedies for violations of the automatic stay. *See, e.g.*, 11 U.S.C. §§ 105(a), 362(k); *see also Standard Indus., Inc. v. Aquila, Inc. (In re C.W. Mining Co.)*, 625 F.3d 1240, 1246 (10th Cir. 2010) (holding that a debtor may pursue remedies regarding a stay violation by contempt motion pursuant to Bankruptcy Rules 9020 and 9014); *Buckeye Check Cashing, Inc. v. Meadows (In re Meadows)*, 396 B.R. 485, 498 (6th Cir. BAP 2008) (“[A]ctions to recover damages for stay violations are generally brought by motion, with attorney fees expressly allowable under § 362(k).”).

15. In addition to the automatic stay, other provisions of the Bankruptcy Code provide important protections to debtors. Section 525 of the Bankruptcy Code prohibits governmental units from, among other things: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before



the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases. *See In re Psycho-Therapy and Counseling Ctr., Inc.*, 195 B.R. 522, 533 (Bankr. D. Col. 1996) (holding that the debtor's exclusion from a governmental program on account of its non-payment of a dischargeable debt would interfere with the debtor's breathing spell and fresh start).

16. Furthermore, filing for chapter 11 bankruptcy protection does not have to be the only motivation behind a governmental unit's actions for the court to find discrimination occurred under section 525 of the Bankruptcy Code. The Supreme Court set forth the standard to evaluate discrimination under section 525 in *FCC v. NextWave Personal Communications, Inc.* stating that if the *proximate cause* of an act was the debtor filing for bankruptcy or not paying dischargeable debt, a violation of section 525 has occurred. 537 U.S. 293, 294 (2003). In so holding, the Supreme Court did not limit application of section 525 to situations where initiation of bankruptcy proceedings was the cause-in-fact of a governmental actor's discriminatory behavior. *See also In re Env'tl. Source Corp.*, 431 B.R. 315, 323 (Bankr. D. Mass. 2010) (finding that because the debtor's financial incapacity was the proximate cause of the debarment, the other motives of the Commonwealth in enacting the debarment statute were irrelevant); *In re Valentin*, 309 B.R. 715, 720-22 (Bankr. E.D. Pa. 2004) (finding that a debtor's failure to pay prepetition rent was the proximate cause of the housing authority's decision to evict in violation of section 525). The government entity's motives do not have to be obvious for a court to find that the entity discriminated against a debtor. *See In re McKibben*, 233 B.R. 378, 381 (Bankr. E.D. Tex. 1999). Courts must evaluate the evidence and make an inference as to the government entity's intent. *See In re Ellis*, 493 B.R. 818, 828 (Bankr. D. Colo. 2013).



17. Section 525 of the Bankruptcy Code is designed to protect property interests, including “license[s], charter[s], franchise[s], and other similar grants,” that are not obtainable from the private sector and that are essential to the debtor’s fresh start. *In re Jasper*, 325 B.R. 50, 54 (Bankr. D. Me. 2005). One purpose behind section 525 of the Bankruptcy Code is to enable a debtor to continue to run their business and to protect a debtor’s “means of earning a living or pursuing a livelihood.” *In re Elsinore Shore Associates*, 66 B.R. 723, 741-42 (Bankr. D. N.J. 1986). Courts have found a violation of section 525 where the government action frustrates a debtor’s ability to reorganize. *See Matter of Anderson*, 15 B.R. 399, 400 (Bankr. S.D. Miss. 1981) (finding that non-renewal of a liquor license would be prohibited government action under section 525 because it would force them to close their retail store, lose their means of earning a living, and ultimately preclude the reorganization of the debtors).

18. The list of discriminatory acts in section 525 is not meant to be exhaustive. *See In re Elsinore Shore Associates*, 66 B.R. 723, 740 (Bankr. D. N.J. 1986). Courts have prohibited discrimination even where the type of discrimination was not explicitly listed or did not fit squarely in section 525 of the Bankruptcy Code. *See, e.g., Perez v. Campbell*, 402 U.S. 637, 648 (1971) (finding that a statute violated supremacy clause because it required debtor to pay a judgment to get driver’s license reinstated, emphasizing, that “(o)ne of the primary purposes of the Bankruptcy Act’ is to give debtors ‘a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.’”); *In re Golliday*, 216 B.R. 407 (Bankr. W.D. Mich. 1998) (finding that a city was prohibited from terminating debtor’s position as elected city commissioner due to defaulted obligation that was dischargeable in bankruptcy); *see also* H.R. Rep. No. 595, 95th Cong., 1st Sess. 367 (1977), *reprinted in* App. Pt. 4(d)(i) *infra*; S. Rep. No. 989, 95th Cong., 2d Sess. 81 (1978) (explaining that courts are not limited to the discriminatory acts explicitly laid



out in section 525 of the Bankruptcy Code but, instead, should, “mark the contours of the anti-discrimination provision in pursuit of sound bankruptcy policy.”).

19. Additionally, section 365(e)(1)(B) of the Bankruptcy Code prohibits counterparties to debtor contracts from terminating or modifying such contracts, including rights or obligations thereunder, solely on account of a debtor’s bankruptcy filing—thereby invalidating “*ipso facto*” provisions. Section 365 of the Bankruptcy Code also prohibits, absent court approval, third parties from enforcing the terms of a contract against the Debtors. *See N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531-32 (1984). Third parties must continue to perform under executory contracts until they are assumed or rejected. *See In re Calpine Corp.*, No. 06-10678, 2009 Bankr. LEXIS 1041, at \*15 (Bankr. S.D.N.Y. May 7, 2009).

20. Pursuant to section 105(a) of the Bankruptcy Code, the Court may issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Section 105(a) therefore authorizes a bankruptcy court to issue injunctions or take other necessary steps in aid of its jurisdiction. *See, e.g., MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988); *United States v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986). Such orders are appropriate where, as here, they are essential to the debtor’s reorganization efforts and do not burden creditors. *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994) (holding that, as courts of equity, bankruptcy courts are empowered to invoke equitable principles to achieve fairness and justice in the reorganization process).

21. The application of the protections afforded a debtor by sections 362, 365, 525 of the Bankruptcy Code is automatic upon the filing of a chapter 11 petition. *See* 11 U.S.C. § 362(a)(3) (“[A] petition filed under section 301 . . . of this title . . . operates as a stay, applicable to all entities, of, [among other things,] any act to obtain possession of property of the



estate or of property from the estate or to exercise control over property of the estate.”); 11 U.S.C. § 525(a) (“[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against . . . a person that is or has been a debtor under this title.”).

22. Despite the automatic effect of these provisions, non-U.S. creditors unfamiliar with the Bankruptcy Code may attempt to proceed against the Debtors’ property outside the United States even though the Debtors have filed voluntary petitions. Such unilateral self-help, litigation, or collection actions could adversely affect the Debtors’ efficient administration of these chapter 11 cases and result in irreparable harm to the estates and interested parties. Although the automatic stay, anti-discrimination provisions, and *ipso facto* protections are self-executing on the Petition Date, the Debtors believe that an order from the Court is necessary and appropriate in light of the Debtors’ global operations to best facilitate creditor compliance with the Bankruptcy Code. Service of the Notice as set forth herein will advance the efficient administration of these chapter 11 cases.

23. The requested relief will, among other things, (a) help the Debtors inform non-U.S. creditors and interested parties of debtor protections that may be unfamiliar to them, (b) ensure that parties to unexpired leases and executory contracts with the Debtors continue to perform their duties and obligations thereunder and governmental units do not unfairly discriminate or take action against the Debtors in violation of the Bankruptcy Code, and (c) facilitate the Debtors’ orderly transition into chapter 11 and minimize disruptions to their businesses.<sup>3</sup> Accordingly, the Debtors request that the Court enter an order substantially in the form attached hereto to most

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<sup>3</sup> As necessary, the Debtors anticipate translating this Motion, the Order, and/or the Notice into other languages in order to better inform creditors, governmental units, and interested parties of the relief requested herein.



effectively enforce the automatic stay, the anti-discrimination provisions, and the *ipso facto* Protections of the Bankruptcy Code.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

24. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. Protections offered by the automatic stay are vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Request of Waiver of Stay**

25. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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



**No Prior Request**

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

**Notice**

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

*[Remainder of page intentionally left blank]*



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

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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*Proposed Co-Counsel for Debtors and  
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**Exhibit A**

**Proposed Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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



**ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE  
AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND  
*IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING  
THE FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF**

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



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE RELATED FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF

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Upon the *Debtors' Motion for Entry of an Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief* (the “Motion”),<sup>1</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”),<sup>2</sup> for entry of an order (this “Order”) (a) restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* protections of the Bankruptcy Code, (b) approving the form and manner of notice, 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 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

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

<sup>2</sup> A complete list of the Debtors in these chapter 11 cases is attached hereto as Exhibit 1.



(Page | 4)

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

Case No. 23-14853 (JKS)

Caption of Order: ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE RELATED FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF

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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 section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any non-U.S. jurisdiction (including any division, department, agency, instrumentality or service thereof, and all those acting on their behalf), are hereby stayed, restrained, and enjoined from:
  - a. commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' chapter 11 cases or recovering a claim against the Debtors that arose before the commencement of the Debtors' chapter 11 cases;
  - b. enforcing, against the Debtors or against property of their estates, a judgment or order obtained before the commencement of the Debtors' chapter 11 cases;
  - c. taking any action, whether inside or outside the United States, to obtain possession of property of the Debtors' estates, wherever located, or to exercise control over property of the Debtors' estates;
  - d. taking any action to create, perfect, or enforce any lien against the property of the Debtors' estates;
  - e. taking any action to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose prior to the commencement of the Debtors' chapter 11 cases;



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE RELATED FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF

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- f. taking any action to collect, assess, or recover a claim against the Debtors that arose prior to the commencement of the Debtors' chapter 11 cases;
- g. offsetting any debt owing to the Debtors that arose before the commencement of the Debtors' chapter 11 cases against any claim against the Debtors; and
- h. commencing or continuing any proceeding concerning the Debtors, subject to the provisions of 11 U.S.C. § 362(b).

3. Pursuant to section 525 of the Bankruptcy Code, all governmental units and other regulatory authorities are prohibited from: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases.

4. For the avoidance of doubt, this Order does not expand or enlarge the rights afforded to the Debtors under the Bankruptcy Code.

5. The form of Notice, attached as **Exhibit 2** hereto, is approved. The Debtors are authorized to serve the Notice upon creditors, governmental units or other regulatory authorities, and/or interested parties wherever located. The Debtors are further authorized to procure and provide true and correct foreign-language translations of the Motion, this Order, the Notice, or any other materials filed in these chapter 11 cases to any foreign party in interest at the Debtors' discretion.



(Page | 6)

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

Case No. 23-14853 (JKS)

Caption of Order: ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE RELATED FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF

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6. This Order remains subject to section 362 of the Bankruptcy Code, including its exceptions. This Order shall not affect the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code.

7. 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 (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* filed substantially contemporaneously herewith (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.

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

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



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

Case No. 23-14853 (JKS)

Caption of Order: ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE RELATED FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF

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

11. 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.

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 Order.



**EXHIBIT 1**

**List of Debtors**

1. Cyxtera Management, Inc.
2. Cyxtera Netherlands B.V.
3. Cyxtera Communications, LLC
4. Cyxtera Data Centers, Inc.
5. Cyxtera DC Holdings, Inc.
6. Cyxtera DC Parent Holdings, Inc.
7. Cyxtera Technologies, Inc.
8. Cyxtera Federal Group, Inc.
9. Cyxtera Canada TRS, ULC
10. Cyxtera Canada, LLC
11. Cyxtera Communications Canada, ULC
12. Cyxtera Digital Services, LLC
13. Cyxtera Technologies Maryland, Inc.
14. Cyxtera Holdings, LLC
15. Cyxtera Employer Services LLC
16. Cyxtera Technologies, LLC



**EXHIBIT 2**

**Form of Notice**



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

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**NOTICE OF ENTRY OF AN ORDER  
(I) RESTATING AND ENFORCING THE WORLDWIDE  
AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND  
*IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING  
THE FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF**



**PLEASE TAKE NOTICE** that on June 4, 2023, the above-captioned debtors and debtors in possession (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”). The Debtors’ chapter 11 cases are pending before the Honorable John K. Sherwood, United States Bankruptcy Judge, and are being jointly administered under the lead case *Cyxtera Technologies, Inc. et al.*, Case No. 23-14853 (JKS).

**PLEASE TAKE FURTHER NOTICE** that pursuant to section 362(a) of the Bankruptcy Code, the Debtors’ filing of their respective voluntary petitions operates as a self-effectuating, statutory stay or injunction that is applicable to all entities and protects the Debtors from, among other things: (a) the commencement or continuation of a judicial, administrative, or other action or proceeding against the Debtors (i) that was or could have been commenced before the commencement of the Debtors’ cases or (ii) to recover a claim against the Debtors that arose before the commencement of the Debtors’ cases; (b) the enforcement, against the Debtors or against any property of the Debtors’ bankruptcy estates, of a judgment obtained before the commencement of the Debtors’ cases; or (c) any act to obtain possession of property of or from the Debtors’ bankruptcy estates, or to exercise control over property of the Debtors’ bankruptcy estates.<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE** that pursuant to that certain *Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief* (the “Order”) [Docket No. [ ]], entered on [ ], 2023, and attached hereto as **Exhibit A**, all persons (including individuals, partnerships, corporations, and

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<sup>1</sup> Nothing herein shall constitute a waiver of the right to assert any claims, counterclaims, defenses, rights of setoff or recoupment, or any other claims of the Debtors against any party to the above-captioned cases. The Debtors expressly reserve the right to contest any claims that may be asserted against them.



other entities, and all those acting on their behalf) wherever located, persons party to a contract or agreement with the Debtors, and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any foreign country (including any division, department, agency, instrumentality, or service thereof, and all those acting on their behalf) are hereby put on notice that they are subject to the Order and must comply with its terms and provisions.

**PLEASE TAKE FURTHER NOTICE** that a complete list of the Debtors in these chapter 11 cases is attached to the Order as Exhibit 1.

**PLEASE TAKE FURTHER NOTICE** that any entity that seeks to assert claims, interests, causes of action, or other legal or equitable remedies against, or otherwise exercise any rights in law or equity against, the Debtors or their estates must do so in front of the Court pursuant to the Order, the Bankruptcy Code, and applicable law.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, any governmental agency, department, division or subdivision, or any similar governing authority is prohibited from, among other things: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases as set forth more particularly in the Order.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, parties to contracts or agreements with the Debtors are prohibited from terminating such contracts or agreements because of a Debtor's bankruptcy filing, except as permitted by the Court under applicable law.



**PLEASE TAKE FURTHER NOTICE** that pursuant to sections 105(a) and 362(k) of the Bankruptcy Code and rule 9020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), among other applicable substantive law and rules of procedure, any person or governmental unit seeking to assert its rights or obtain relief outside of the processes set forth in the Order, the Bankruptcy Code, and applicable law may be subject to proceedings in front of the Court for failure to comply with the Order and applicable law, including contempt proceedings that may result in fines, sanctions, and punitive damages against the entity and its assets inside the United States.

**PLEASE TAKE FURTHER NOTICE** nothing in the Order expands, enlarges, or limits the rights afforded to any party under the Bankruptcy Code, nor does the Order modify the rights provided under section 362(b) of the Bankruptcy Code, and all rights of parties in interest to assert that any action is subject, or not subject, to the stay and injunction contemplated by section 362 of the Bankruptcy Code and the Order, including because of the operation of section 362(b) of the Bankruptcy Code, are preserved.

**PLEASE TAKE FURTHER NOTICE** that additional information regarding the Debtors’ chapter 11 cases, including copies of pleadings filed therein, may be obtained by accessing the Debtors’ publicly available website at <https://www.kccllc.net/cyxtera>.



Dated: [\_\_\_\_], 2023

Respectfully submitted,

/s/

---

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



This is **Exhibit "S"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.  Debtor. <sup>1</sup>	Chapter 11  Case No. 23-14853 (JKS)
In re:  CYXTERA CANADA, LLC  Debtor.	Chapter 11  Case No. 23-14855 (JKS)

<sup>1</sup> 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.





In re:  CYXTERA CANADA TRS, ULC  Debtor.	Chapter 11  Case No. 23-14854 (JKS)
In re:  CYXTERA COMMUNICATIONS CANADA, ULC  Debtor.	Chapter 11  Case No. 23-23-14856 (JKS)
In re:  CYXTERA COMMUNICATIONS, LLC  Debtor.	Chapter 11  Case No. 23-14852 (JKS)
In re:  CYXTERA DATA CENTERS, INC.  Debtor.	Chapter 11  Case No. 23-23-14857 (JKS)
In re:  CYXTERA DC HOLDINGS, INC.  Debtor.	Chapter 11  Case No. 23-14858 (JKS)
In re:  CYXTERA DC PARENT HOLDINGS, INC.  Debtor.	Chapter 11  Case No. 23-14859 (JKS)
In re:  CYXTERA DIGITAL SERVICES, LLC  Debtor.	Chapter 11  Case No. 23-14860 (JKS)
In re:  CYXTERA EMPLOYER SERVICES, LLC  Debtor.	Chapter 11  Case No. 23-14861 (JKS)
In re:  CYXTERA FEDERAL GROUP, INC.  Debtor.	Chapter 11  Case No. 23-14862 (JKS)



In re:  CYXTERA HOLDINGS, LLC  Debtor.	Chapter 11  Case No. 23-14863 (JKS)
In re:  CYXTERA MANAGEMENT, INC.  Debtor.	Chapter 11  Case No. 23-14864 (JKS)
In re:  CYXTERA NETHERLANDS B.V.  Debtor.	Chapter 11  Case No. 23-14865 (JKS)
In re:  CYXTERA TECHNOLOGIES, LLC  Debtor.	Chapter 11  Case No. 23-14867 (JKS)
In re:  CYXTERA TECHNOLOGIES MARYLAND, INC.  Debtor.	Chapter 11  Case No. 23-14866 (JKS)

**DEBTORS' MOTION FOR ENTRY OF AN  
ORDER (I) DIRECTING JOINT ADMINISTRATION OF  
CHAPTER 11 CASES AND (II) GRANTING RELATED RELIEF**



TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (the “Motion”):<sup>1</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing, but not directing, the Debtors to procedurally consolidate and jointly administer these chapter 11 cases; and (b) granting related relief. The Debtors request that the Court (as defined herein) maintain one file and one docket for all of the jointly administered cases under the case of Cyxtera Technologies, Inc., Case No. 23-14853 (JKS).

**Jurisdiction and Venue**

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

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

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<sup>1</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



4. The bases for the relief requested herein are sections 105(a) and 342(c)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 1015(b) and 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.



**Basis for Relief Requested**

7. Bankruptcy Rule 1015(b) provides, in pertinent part, that “[i]f . . . two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order a joint administration of the estates.” Fed. R. Bankr. P. 1015. The sixteen Debtor entities that commenced these chapter 11 cases are “affiliates” as that term is defined in section 101(2) of the Bankruptcy Code. Accordingly, the Bankruptcy Code and Bankruptcy Rules authorize the Court to grant the relief requested herein.

8. Joint administration is generally non-controversial, and courts in this jurisdiction routinely order joint administration in cases with multiple related debtors. *See, e.g., In re Bed Bath & Beyond Inc.*, No 23-13359 (VFP) (Bankr. D.N.J. Apr. 24, 2023) (directing joint administration of chapter 11 cases); *In re David’s Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023) (same); *In re Block Fi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 29, 2022) (same); *In re Nat’l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. June 9, 2022) (same); *In re Alliant Tech., L.L.C.*, No. 21-19748 (JKS) (Bankr. D.N.J. Dec. 23, 2021) (same).<sup>2</sup>

9. Given the integrated nature of the Debtors’ operations, joint administration of these chapter 11 cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders in these chapter 11 cases will affect each Debtor entity. The entry of an order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration will also allow the Office of the United States Trustee for the District of New

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<sup>2</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.



Jersey (the “U.S. Trustee”) and all parties in interest to monitor these chapter 11 cases with greater ease and efficiency.

10. Moreover, joint administration will not adversely affect the Debtors’ respective constituencies. This Motion seeks only administrative, not substantive, consolidation of the Debtors’ estates. Parties in interest will not be harmed by the relief requested; rather, parties in interest will benefit from (i) the cost reductions associated with the joint administration of these chapter 11 cases and (ii) ease of reference to one main case docket of Cyxtera Technologies Inc. throughout these chapter 11 cases. Accordingly, the Debtors submit that the joint administration of these chapter 11 cases is in the best interests of their estates, their creditors, and all other parties in interest.

11. The Debtors request that all orders, pleadings, papers, and documents, except proofs of claim, lists, schedules, and statements, shall be filed and docketed in the case number assigned to Cyxtera Technologies, Inc. (the “Lead Case”), bearing the caption as shown in Exhibit 1 to the Order attached hereto. All proofs of claim shall be filed and docketed under the case number representing the estate against which the claim is made, and a creditor of more than one estate shall file a proof of claim in each case in which a claim may be made, and only in the amount that the creditor may make a claim from that estate.

12. The Debtors also seek the Court’s direction that a notation be entered on the docket in each of the Debtors’ chapter 11 cases to reflect the joint administration of these cases.

13. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.



**Waiver of Memorandum of Law**

14. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to rule 9013-1(a)(3) of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

**No Prior Request**

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

**Notice**

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



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

Dated: June 4, 2023

*/s/ Michael D. Sirota*

---

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**Exhibit A**

**Proposed Order**



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

In re:  CYXTERA TECHNOLOGIES, INC.  Debtor. <sup>1</sup>	Chapter 11  Case No. 23-14853 (JKS)
In re:  CYXTERA CANADA, LLC  Debtor.	Chapter 11  Case No. 23-14855 (JKS)

<sup>1</sup> 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.



In re:  CYXTERA CANADA TRS, ULC  Debtor.	Chapter 11  Case No. 23-14854 (JKS)
In re:  CYXTERA COMMUNICATIONS CANADA, ULC  Debtor.	Chapter 11  Case No. 23-23-14856 (JKS)
In re:  CYXTERA COMMUNICATIONS, LLC  Debtor.	Chapter 11  Case No. 23-23-14852 (JKS)
In re:  CYXTERA DATA CENTERS, INC.  Debtor.	Chapter 11  Case No. 23-23-14857 (JKS)
In re:  CYXTERA DC HOLDINGS, INC.  Debtor.	Chapter 11  Case No. 23-14858 (JKS)
In re:  CYXTERA DC PARENT HOLDINGS, INC.  Debtor.	Chapter 11  Case No. 23-14859 (JKS)
In re:  CYXTERA DIGITAL SERVICES, LLC  Debtor.	Chapter 11  Case No. 23-14860 (JKS)
In re:  CYXTERA EMPLOYER SERVICES, LLC  Debtor.	Chapter 11  Case No. 23-14861 (JKS)
In re:  CYXTERA FEDERAL GROUP, INC.  Debtor.	Chapter 11  Case No. 23-14862 (JKS)



In re:  CYXTERA HOLDINGS, LLC  Debtor.	Chapter 11  Case No. 23-14863 (JKS)
In re:  CYXTERA MANAGEMENT, INC.  Debtor.	Chapter 11  Case No. 23-14864 (JKS)
In re:  CYXTERA NETHERLANDS B.V.  Debtor.	Chapter 11  Case No. 23-14865 (JKS)
In re:  CYXTERA TECHNOLOGIES, LLC  Debtor.	Chapter 11  Case No. 23-14867 (JKS)
In re:  CYXTERA TECHNOLOGIES MARYLAND, INC.  Debtor.	Chapter 11  Case No. 23-14866 (JKS)



**ORDER (I) DIRECTING JOINT ADMINISTRATION OF  
CHAPTER 11 CASES AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through five (5), is  
**ORDERED.**



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief

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Upon the *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing the Debtors to direct the joint administration of the Debtors' chapter 11 cases for procedural purposes only 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 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.

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<sup>2</sup> 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: Order (I) Directing Joint Administration of Chapter 11 Cases and  
(II) Granting Related Relief

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2. The above-captioned cases hereby are jointly administrated by this Court for procedural purposes only.

3. Nothing contained in the Motion, or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of these chapter 11 cases, and this Order shall be without prejudice to the rights of the Debtors to seek entry of an order substantively consolidating their respective cases.

4. The Debtors shall maintain, and the Clerk of the United States Bankruptcy Court for the District of New Jersey shall keep, one consolidated docket, one file, and one consolidated service list for these chapter 11 cases.

5. All pleadings, papers, and documents filed in the Lead Case shall bear the caption as shown in **Exhibit 1** attached hereto.

6. The caption shown in **Exhibit 1** attached hereto satisfies the requirements set forth in section 342(c)(1) of the Bankruptcy Code.

7. All lists, schedules, and statements shall be filed and docketed in the specific Debtor's case to which they are applicable.

8. Any party in interest may request joint hearings on matters pending in any of these chapter 11 cases.

9. If pleadings, papers, or documents have been filed in any of the above-captioned cases other than the Lead Case prior to the entry of this Order, and those matters have not yet been heard and decided, the party who filed the pleading, paper, or document shall (i) refile the pleading, paper, or document in the Lead Case within three (3) business days of the entry of this Order,



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Directing Joint Administration of Chapter 11 Cases and  
(II) Granting Related Relief

---

(ii) set the pleading, paper, or document for hearing before the judge assigned to the Lead Case, and (iii) notice the hearing to all appropriate parties.

10. The Clerk shall file a copy of this order in the Lead Case and each of the affiliated Debtor cases.

11. The Debtors shall file individual monthly operating reports for each Debtor and such reports shall be docketed in the Lead Case.

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

14. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

15. A true copy of this Order shall be served on all required parties pursuant to Local Rule 9013-5(f).

16. This Order shall be effective immediately upon entry.

17. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.



**Exhibit 1**

**Case Caption**



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.

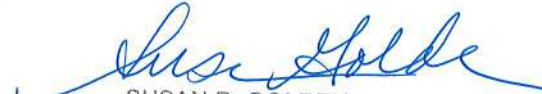


This is **Exhibit "T"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



---

A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
(I) ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT,  
AND ADMINISTRATIVE PROCEDURES AND (II) GRANTING RELATED RELIEF**

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



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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing, but not directing, the Debtors to designate these chapter 11 cases as complex cases, (b) approving and implementing certain notice, case management, and administrative procedures as described in Exhibit 1 to the Order (collectively, the “Case Management Procedures”); and (c) granting related relief.

2. There are thousands of creditors and parties in interest in these chapter 11 cases. Notice of all pleadings and other papers filed in this bankruptcy case to each of these parties would be extremely burdensome and costly to the estate. The costs of photocopying, postage, and other expenses associated with such large mailings would be excessive and practically prohibitive. The relief sought in this Motion is tailored to address such concerns while simultaneously ensuring timely notification to those parties actively participating in this case or those parties whose rights are directly affected by a given matter.

**Jurisdiction and Venue**

3. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

5. The bases for the relief requested herein are sections 102(1), 105(a), 107(c), and 521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 1001, 1007, 2002, 9007, 9013-1, 9014, and 9036 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 1007-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

6. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.



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

### **Case Management Procedures**

8. On November 25, 2009, the Hon. Judith H. Wizmur, Ret., entered the *General Order Governing Procedures for Complex Chapter 11 Cases* (the “General Order”). The General Order was designed to provide “special scheduling and other procedures” in cases where certain factors, including a large creditor base or high assets and liabilities, were present. *See* General Order ¶ 1. Debtors seeking treatment as a complex case filed a simple application setting forth the factors that warranted complex treatment and an order would be entered designating the cases as “complex cases.”<sup>3</sup> The General Order provided that, “[i]n a Complex Chapter 11 Case, counsel for the debtor, at the hearing on First Day Matters, shall: [d]iscuss with the Court, provisions regarding the entry of a proposed case management order in accordance with the Guidelines Establishing Case Management and Administrative Procedures for Cases Designated as Complex Chapter 11 Cases [(the “General Guidelines)], a copy of which [was] attached [to the General Order] as Exhibit F.” *Id.* ¶ 6(a).

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<sup>3</sup> Out of an abundance of caution, the Debtors are seeking authority to designate these chapter 11 cases as complex cases in compliance with the General Order, which is considered an archived general order. *See Transcript of First Day Motions, In re SLT HoldCo, Inc.*, No. 20-18268 (MBK), Hr’g Tr. at 17:2–8 (Bankr. D.N.J. July 10, 2020) (noting that the United States Trustee for Region III has “question[ed] whether this relief is necessary in light of the fact that the November 25 [*sic*], 2009 order is an archived general order”). The Court recently granted similar relief designating the debtors’ chapter 11 cases as complex cases via the debtors’ case management motion. *See, e.g., Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Apr. 25, 2023).



9. Although the General Guidelines were state of the art in 2009, in the ensuing fourteen years, technology has developed rapidly, and our lives have changed in response. In light of these changes, the General Guidelines do not satisfy the Debtors' particular needs in 2023. For example, the General Guidelines require paper service that is no longer necessary or practicable in light of, among other things: (i) the fact that most people check their email multiple times a day, giving them instant access to pleadings and information electronically served on them; (ii) the fact that many people do not check their paper mail with any regularity; (iii) the fact that many people do not work from offices five days a week; and (iv) the size of today's chapter 11 cases and the current inflationary environment makes paper service cost prohibitive, even when effectuated via first class mail (*i.e.*, when not served via overnight carrier).

10. In light of these realities, the Debtors seek authority to implement a set of Case Management Procedures—based on and closely correlated with the General Guidelines—that have been tailored to the Debtors' particular facts and circumstances, as well as the practicalities of service and bankruptcy practice in 2023.

11. The Case Management Procedures, among other things: (a) establish requirements for filing and serving notices, motions, applications, declarations, affidavits, objections, replies, responses, memoranda, briefs, supporting documents, and other papers filed in these chapter 11 cases, including with regard to any contested matters and any related adversary proceedings (collectively, the "Court Filings"), and any orders entered in these chapter 11 cases, including with regard to any contested matters and any related adversary proceedings (together with the Court Filings, the "Court Filings and Orders"); (b) delineate standards for notices of hearings and agendas; (c) fix periodic omnibus hearing dates and provide mandatory guidelines for scheduling



hearings and setting objection and reply deadlines; and (d) minimize potential burdens on the Court by limiting matters that are required to be heard by the Court.

12. The Debtors believe that the Case Management Procedures will facilitate service of Court Filings and Orders in a manner that will maximize the efficiency and orderly administration of the chapter 11 cases, while at the same time ensuring that appropriate notice is provided, particularly to parties who express an interest in these chapter 11 cases and those directly affected by a request for relief. In particular, the Case Management Procedures are intended to:

- a. reduce the need for expedited hearings and requests for expedited relief;
- b. provide for omnibus hearings for the Court to consider motions, applications, other pleadings, and any responses thereto, as applicable;
- c. promote consensual resolution of important matters;
- d. assure prompt receipt of appropriate notice by potentially affected parties;
- e. allow for electronic notice in accordance with the Court's electronic filing system (the "ECF System");
- f. provide ample opportunity for parties in interest to prepare for and respond to matters before the Court;
- g. reduce the substantial administrative and financial burden that otherwise may be placed on the Debtors and other parties in interest who file documents in these chapter 11 cases; and
- h. reduce the administrative burdens on the Court and the office of the clerk of the United States Bankruptcy Court for the District of New Jersey (the "Clerk of Court").

13. To ensure that parties in interest in these chapter 11 cases are made aware of the Case Management Procedures, the Debtors propose to: (a) serve the Case Management Procedures via electronic mail (where available) or regular mail on each of the parties on the Master Service List (as defined in the Case Management Procedures) as soon as practicable after entry of the Order; (b) publish the Case Management Procedures on the Debtors' restructuring website at <https://www.kccllc.net/cyxtera> (the "Case Website"); and



(c) make the Case Management Procedures readily available upon request to the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC (the "Claims Agent"). If the Case Management Procedures are modified during these chapter 11 cases, the Debtors will (a) make updated versions of the Case Management Procedures available on the Case Website, (b) file a notice of the updated procedures (along with a copy of the updated procedures) electronically on the docket, and (c) serve such updated procedures in accordance with the revised Case Management Procedures.

### **Basis for Relief**

14. The Bankruptcy Rules and Bankruptcy Code provide the Debtors with authority to establish notice and case management procedures. In particular, Bankruptcy Rule 2002(a) provides that, unless otherwise ordered by the Court, notice of certain matters must be given to, among others, all of the Debtors' creditors, equity security holders, and other parties in interest. The Bankruptcy Rules further provide that "[t]he Court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." *See* Fed. R. Bankr. P. 2002(m); *see also* Fed. R. Bankr. P. 9007 ("When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.").

15. In addition, section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory fiat or under equitable common law principles. Specifically, section 105(a) provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or



appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

16. Under section 102(1) of the Bankruptcy Code, where the Bankruptcy Code provides for an action to occur “after notice and a hearing,” such action may occur “after such notice is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances [.]” 11 U.S.C. § 102(1)(A). Finally, and perhaps most importantly, Bankruptcy Rule 1001 requires the Bankruptcy Rules to be “construed . . . to secure the just, speedy, and inexpensive determination of every case and proceeding.” Fed. R. Bankr. P. 1001.

17. The Debtors’ chapter 11 cases are complex, will likely be fast-paced, and will involve large numbers of creditors and other parties in interest. The costs and burdens associated with the possibility of frequent and fragmented hearings, plus the costs associated with copying and mailing or otherwise serving all documents filed with the Court to all such entities, will impose an extraordinary and expensive administrative and economic burden on the Debtors’ estates, the Court, and the parties in interest. Indeed, constant mass mailings will be extraordinarily costly to the Debtors’ estates and will require the Debtors to divert valuable resources to comply with all administrative requirements. Additionally, hard copy mailing is not available for all parties in interest, so the Debtors request to serve such parties, through the Claims Agent, via electronic mail to ensure service on such parties.

18. Limited notice procedures are routinely established by bankruptcy courts in large chapter 11 cases to reduce the expense of the administration of the estate. *See In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Apr. 25, 2023); *In re David’s Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr.



D.N.J. Nov. 30, 2022); *In re Aearo Tech. LLC*, No. 22-02890-JJG-11 (Bankr. S.D. Ind. Sept. 30, 2022); *In re Celsius Network LLC*, No. 22-10964 (MG) (Bankr. S.D.N.Y. Aug. 17, 2022).

19. For the reasons discussed herein, the Debtors believe that the Case Management Procedures are appropriate and should be approved and implemented. The establishment of the Case Management Procedures will promote the efficient and orderly administration of these chapter 11 cases. For these reasons, the Debtors believe that the relief requested herein is in the best interests of the Debtors and their estates and should be approved.

#### **Waiver of Memorandum of Law**

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

#### **Reservation of Rights**

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



limitation of the Debtors', or any other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

**No Prior Request**

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

**Notice**

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

*[Remainder of page intentionally left blank.]*



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

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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**Exhibit A**

**Proposed Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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



**ORDER (I) ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT, AND ADMINISTRATIVE PROCEDURES AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through six (6) and the **Exhibit 1** attached hereto, is hereby **ORDERED**.



(Page 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures, and (II) Granting Related Relief

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Upon the *Debtors' Motion for Entry of an Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures, and (II) Granting Related Relief* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing, but not directing, the Debtors to designate these chapter 11 cases as complex cases, (b) approving and implementing certain notice, case management, and administrative procedures as described in Exhibit 1 to the case management Order (collectively, the "Case Management Procedures"); 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 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,

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<sup>2</sup> 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: Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures, and (II) Granting Related Relief

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**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Court concludes that the above-captioned cases constitute complex chapter 11 cases.
3. The Case Management Procedures set forth in **Exhibit 1** hereto are approved and shall apply as provided therein in these chapter 11 cases, except as otherwise ordered by the Court. Notice and service accomplished in accordance with the Case Management Procedures, including service via electronic mail (where available), shall be deemed adequate in all respects pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. To the extent the Case Management Procedures conflict with the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the Case Management Procedures shall govern and supersede such rules.
4. The next three omnibus hearings are scheduled as follows:
  - (a) \_\_: \_\_ .m., prevailing Eastern Time, on \_\_\_\_, 2023;
  - (b) \_\_: \_\_ .m., prevailing Eastern Time, on \_\_\_\_, 2023; and
  - (c) \_\_: \_\_ .m., prevailing Eastern Time, on \_\_\_\_, 2023.
5. Prior to giving notice of the Case Management Procedures, the Debtors are authorized to make non-substantive revisions and corrections as needed to the Case Management Procedures, including filling in (a) the omnibus hearing schedule, and (b) the date and docket number of this Order where indicated therein.
6. Any party may obtain a copy of the Case Management Procedures by: (a) accessing the website maintained by the Claims Agent at <https://www.kccllc.net/cyxtera> free of charge; (b) contacting the Claims Agent directly at Cyxtera Technologies, Inc. Claims Processing Center



(Page 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures, and (II) Granting Related Relief

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c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245, by email at CyxteraInfo@kccllc.com, or by telephone at (877) 726-6510 (toll-free), (424) 236-7250 (International), or (c) by accessing PACER on the Court's website at <https://www.njb.uscourts.gov> for a nominal fee.

7. As soon as practicable after the entry of this Order, a copy of the Case Management Procedures shall be served by the Debtors on each of the parties on the Master Service List (as defined in the Case Management Procedures attached as **Exhibit 1** hereto). To help ensure that all parties who may participate in these chapter 11 cases are aware of the terms of the Case Management Procedures, the Claims Agent shall post the Case Management Procedures on the Case Website (as defined in the Case Management Procedures attached as **Exhibit 1** hereto).

8. If the Case Management Procedures are modified during these chapter 11 cases, the Debtors shall (a) make updated versions of the Case Management Procedures available on the Case Website, (b) file a notice of the updated procedures (along with a copy of the updated procedures) electronically on the docket, and (c) serve such updated procedures in accordance with the revised Case Management Procedures.

9. This Order shall be effective immediately upon entry, and the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

11. A true copy of this Order shall be served on all required parties pursuant to Local Rule 9013-5(f).



(Page 6)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures, and (II) Granting Related Relief

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12. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.



**Exhibit 1**

**Case Management Procedures**



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

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

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In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**NOTICE, CASE MANAGEMENT, AND ADMINISTRATIVE PROCEDURES**

On June 4, 2023 (the “Petition Date”), Cyxtera Technologies, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-referenced chapter 11 cases (collectively,

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



the “Debtors”) commenced the above-captioned bankruptcy cases (these “Chapter 11 Cases”) by filing their voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On [●], 2023, the Court entered an order (the “Case Management Order”) [Docket No. [●]], pursuant to sections 102(1), 105(a), 107(c), and 521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 1001, 1007, 2002, 9007, 9013, 9014, and 9036 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 1007-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”), approving (a) these Notice, Case Management, and Administrative Procedures (collectively, the “Case Management Procedures”), and (b) the form and notice thereof.

Pursuant to the Case Management Order, all notices, motions, applications, briefs, memoranda, declarations, affidavits, objections, responses, replies, supporting documents, and other papers filed in these Chapter 11 Cases, including with regards to any contested matters and any related adversary proceedings, and orders entered in these Chapter 11 Cases, including with regards to any contested matters and any related adversary proceedings, are subject to, and will not be deemed properly served unless they are served in accordance with, these Case Management Procedures. Additionally, to the extent there is a conflict between the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules and these Case Management Procedures, these Case Management Procedures shall govern in all respects.

***Accordingly, all parties in interest are strongly encouraged to review the below Case Management Procedures in their entirety and consult their own legal counsel with respect to any of the matters discussed herein prior to filing any documents in the Chapter 11 Cases.***



### **Case Management Procedures**

#### **A. Omnibus Hearings**

1. All Matters to Be Heard at Omnibus Hearings. All matters requiring a hearing in these Chapter 11 Cases, including with regards to any contested matters and any related adversary proceedings, shall be heard at periodic omnibus hearings (each, an “Omnibus Hearing”), in accordance with these Case Management Procedures, unless otherwise ordered by the Court for good cause shown. The Debtors shall be authorized to schedule, in cooperation with the Court, Omnibus Hearings to consider (a) all motions, applications, and other requests for relief, along with any notices, briefs, memoranda, declarations, affidavits, replies, and other documents filed in support of such papers seeking relief (collectively, the “Requests for Relief”); and (b) all objections and responses to such Requests for Relief and documents filed in support of such objections and responses (collectively, the “Objections” and, together with the Requests for Relief and all other filed documents, the “Court Filings”) pursuant to the following procedures:

(a) Initial Omnibus Hearings. The next three Omnibus Hearings shall be held on the following dates and times:

- (i) \_\_: \_\_ .m., prevailing Eastern Time, on \_\_, 2023;
- (ii) \_\_: \_\_ .m., prevailing Eastern Time, on \_\_, 2023; and
- (iii) \_\_: \_\_ .m., prevailing Eastern Time, on \_\_, 2023.

(b) Subsequent Omnibus Hearings. The Debtors shall be authorized to schedule, in coordination with the Court, additional Omnibus Hearings. The Debtors shall file notices of additional Omnibus Hearing dates with the Court on a periodic basis. Kurtzman Carson Consultants LLC, the Debtors’ claims and noticing agent (the “Claims Agent”) shall post the dates of the Omnibus Hearings on a website established for this case at <https://www.kccllc.net/cyxtera> (the “Case Website”). Entities may contact the Claims Agent for information concerning all scheduled Omnibus Hearings.

(c) Proposed Notice of Agenda. Before noon (prevailing Eastern Time) on the day that is two (2) business days before each Omnibus Hearing, the Debtors’ counsel will file a proposed Notice of Agenda with regard to the matters that are



scheduled to be heard at such Omnibus Hearing (the “Notice of Agenda”). The Notice of Agenda may include notice of matters that have been consensually adjourned to a later Omnibus Hearing in lieu of parties filing a separate notice of such adjournment.

(d) Content of Notice of Agenda. The proposed Notice of Agenda shall list: (i) the docket number (in docketing order) and title of each matter scheduled for hearing at such Omnibus Hearing, including the initial filing and any filed responses, replies, or documents related thereto; (ii) the relevant objection deadlines and whether the matters are contested or uncontested; (iii) whether the matters have settled or are proposed to be continued; and (iv) other comments that will assist the Court. The matters listed on the proposed Notice of Agenda shall be limited to matters of substance and shall not include administrative filings, such as notices of appearance and affidavits of service. Resolved or continued matters shall be listed ahead of unresolved matters on the Notice of Agenda. Contested matters shall be listed in the order of docketing with the corresponding docket number.

All amended Notices shall list matters as listed in the original Notice of Agenda with all edits and additional information being listed in boldface type.

Copies of the Notice of Agenda shall be served upon all counsel who have entered an appearance in the case, as well as all other counsel with a direct interest in any matter on the Notice of Agenda and the United States Trustee simultaneously with the filing of the Notice of Agenda with the Court.

When an adversary proceeding is scheduled, the Notice of Agenda shall indicate the adversary proceeding number and the corresponding docket number for pleadings filed in the adversary proceeding on the Notice of Agenda, in addition to the information regularly required in a Notice of Agenda.

(e) Adjournment of Omnibus Hearings. Unless the Court orders otherwise, the Debtors’ counsel may, without further leave of the Court, (i) adjourn any hearing on a Request for Relief filed by the Debtors to a subsequent Omnibus Hearing either (A) if no Objection contesting the relief has been filed, or (B) with the consent of any party that has filed such an Objection; and (ii) adjourn any hearing on a Request for Relief filed by a non-Debtor party to a subsequent Omnibus Hearing provided that the filing party consents and either (A) no Objection contesting the relief has been filed, or (B) any party that has filed such an Objection consents. Notice of such adjournments may be filed separately on the docket or noted in the Proposed Hearing Agenda.

(f) Cancellation of Omnibus Hearings. If no matters are scheduled for hearing at an Omnibus Hearing, the Debtors may cancel the Omnibus Hearing, with the consent of the Court, by filing a notice of cancellation on the docket for these Chapter 11 Cases.



**B. Filing Procedures; General Motion Practice; Deadlines for Filing of Responsive Pleadings**

2. Procedures Established for Court Filings. Registered users of the Court's Electronic Case Filing System (the "ECF System") shall file all Court Filings electronically. Any Court Filing that refers specifically to a pleading that has already been filed in the Chapter 11 Cases shall make specific reference to the docket number assigned by the Court to such pleading by use of the designation "Docket No. \_\_\_\_" or similar designation.

3. General Motion Practice. The following procedures shall be followed for Requests for Relief generally, except as otherwise provided by these Case Management Procedures or an order of the Court:

(a) Requests for Relief. Any Request for Relief, including briefs, must be filed at least twenty-one (21) calendar days prior to the hearing thereon. A Request for Relief may be scheduled by the filing party to be heard at any Omnibus Hearing at least twenty-one (21) calendar days after the filing of such Request for Relief.

(b) Inconsistent Filings. If a party other than the Debtors files a Court Filing and purports to set a hearing date inconsistent with these Case Management Procedures (an "Inconsistent Filing"), the hearing shall be scheduled, without the necessity of Court order, for the first Omnibus Hearing date after the 21-day notice period has expired, and the Debtors shall provide such party with notice of these Case Management Procedures within three (3) business days of receipt of the Inconsistent Filing. If such filing is filed at least twenty-one (21) days from the next Omnibus Hearing Date, then the hearing with respect to such filing shall be deemed to be on such omnibus hearing date. If such filing is less than twenty-one (21) days prior to the next omnibus hearing date, then the hearing with respect to such filing shall be the next omnibus hearing date after the required twenty-one (21) days have passed. The movant must provide notice of the corrected hearing date to all affected parties and thereafter file a certificate of service regarding the notice.

(c) Service of Requests for Relief. All Requests for Relief shall be served in accordance with the provisions of the Bankruptcy Rules, the Local Rules, and any applicable Court order on: (i) the master service list (the "Master Service List") that the Claims Agent shall maintain pursuant to Bankruptcy Rule 2002; (ii) the list of entities (the "2002 List" and, together with the Master Service List, the "Core Service List") that have filed a written request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (a "2002 Notice Request"), which the Claims Agent also shall maintain pursuant to Bankruptcy Rule 2002; and (iii) each



entity with a particularized interest in the subject matter of the specific Court Filing (each, an “Affected Entity”).

(d) Notices of Requests for Relief. Parties should consult the Local Rules regarding the form and content of notices with respect to Requests for Relief and visit the Court’s website at <http://njb.uscourts.gov> for more information.

(e) Requests for Shortened Time or Limited Notice. Nothing contained herein shall prejudice the rights of any party in interest to move the Court to further limit or expand notice of matters and proceedings upon a showing of good cause, including, but not limited to, the right to (i) file a Request for Relief upon shortened notice; or (ii) seek an enlargement or reduction of time pursuant to Bankruptcy Rule 9006.

(f) Expedited Hearings. If a party in interest has an emergency or other situation that it believes requires consideration on less than the 21-day notice as required by D.N.J. LBR 9013-2(c), the moving party should file and serve, a separate written application requesting shortened time and expedited hearing in respect of the underlying motion in the form provided at D.N.J. LBR 9013-2(c).

If the Court grants the motion for expedited hearing, the underlying motion will be set at the next available omnibus hearing date or at some other appropriate shortened date approved by the Court.

Requests for expedited hearings will only be granted under emergency or exigent circumstances.

(g) Negative Noticing Procedures. Subject to the Court’s discretion, the Court may approve notice procedures which provide that if no objections are timely filed and served by a deadline set in accordance with the Bankruptcy Rules and/or the Case Management Order and/or the Local Rules, the Court may enter an order granting the relief requested without further notice or a hearing (“Negative Notice”). The notice of motion accompanying such motion must specifically advise parties of the objection deadline and must also inform the recipient that if no objections are filed and served, the Court may enter an order granting the motion without further notice or hearing.

Negative Notice may be used in connection with motions including, but not limited to, matters requesting the following relief: (a) rejection of a non-residential real property lease or executory contract pursuant to 11 U.S.C. § 365; (b) extension of deadline to seek removal action pursuant to Bankruptcy Rule 9027; (c) sales of assets outside the ordinary course of business pursuant to 11 U.S.C. § 363 with a purchase price set on a case-by-case basis; (d) approval of settlements and compromises pursuant to Bankruptcy Rule 9019 of claims where the settled amount of the claim does not exceed an amount set on a case-by-case basis; and (e) nothing contained herein shall be construed to limit a party in interest’s ability to request



that the Court approve the use of Negative Notice procedures in connection with motions not specifically identified above.

If an objection is timely filed and served, a hearing will be scheduled for the next Omnibus Hearing date unless otherwise ordered by the Court.

(h) Evidentiary Hearings. Nothing herein shall prejudice the rights of any party to seek appropriate discovery with respect to any Court Filings, and all parties' rights to request an evidentiary hearing or establish a discovery schedule are preserved.

(i) Certificate of No Objection. After the Objection date has passed with no Objection having been filed or served, counsel for the movant may file a Certification of No Objection substantially in the form as it appears in the General Order Governing Procedures for Complex Chapter 11 Cases on the annexed Schedule "1" stating that no Objection has been filed or served on the movant.

By filing such certifications, counsel for the movant is representing to the Court that the movant is unaware of any objection to the motion or application and that counsel has reviewed the Court's docket and no Objection appears thereon.

Upon receipt of the Certification of No Objection, the Court may enter the order accompanying the motion or application without further pleading or hearing and, once the order is entered, the hearing scheduled on the motion or application shall be cancelled without further notice.

4. Filing and Service of Objections, Replies, and Other Responsive Pleadings. The following procedures shall be followed, except as otherwise provided by these Case Management Procedures or an order of the Court:

(a) Objections and Replies. Any Objection, including related briefs, must be filed on or before the date that is seven (7) days prior to the hearing set on the motion unless otherwise provided by the Court (the "Objection Deadline"). If an objection is filed, the movant or another interested party may file a reply and any documents in support of the reply, including briefs (collectively, a "Reply"), with the Court on or before four (4) days before the applicable hearing date unless otherwise provided by the Court (the "Reply Deadline").

(b) Extension of Objection Deadline. The Objection Deadline may be extended upon the consent of the entity filing the Request for Relief without further order of the Court, provided that the Objection Deadline shall not be less than seven (7) days before the hearing on such matter without approval of the Court. The Reply Deadline may be extended with the approval of the Court. Unless otherwise agreed by the entity filing the Request for Relief, adjournment of the hearing on the Request for Relief shall not extend the Objection Deadline.



(c) Service of Objections. All Objections shall be filed with the Court and served by the applicable Objection Deadline upon (i) the entity filing the Request for Relief, (ii) the Debtor, (iii) those entities on the Core Service List, and (iv) each Affected Entity.

(d) Service of Replies to Objections. Any Reply shall be filed and served by the applicable Reply Deadline upon (i) the entity filing the Request for Relief, (ii) the Debtors, (iii) each party that filed an Objection, (iv) each party on the Core Service List, and (v) each Affected Entity.

5. Granting the Request for Relief Without a Hearing. A Request for Relief may be granted without a hearing to the extent allowed under the Bankruptcy Rules or the Local Rules, except as otherwise provided herein. If the Court decides not to grant the Request for Relief without a hearing, (a) the Request for Relief shall be heard at the next scheduled Omnibus Hearing, and (b) the decision not to grant the Request for Relief shall not constitute an extension of the Objection Deadline related thereto with respect to any party, unless otherwise agreed between the party seeking relief and the party seeking to object.

### **C. Service and Notice Procedures**

6. Procedures Established for Notices. All Court Filings shall be filed with the Court and served in accordance with the notice procedures set forth herein (the “Notice Procedures”).

7. Entities Entitled to Service. All Court Filings shall be served on the Core Service List and any other Affected Entities according to the Notice Procedures, except as otherwise provided by these Case Management Procedures or an order of the Court. In accordance with Bankruptcy Rule 2002, the Claims Agent shall maintain the Core Service List, which shall be updated in accordance with paragraph 8 below. An updated Core Service List can be obtained by (a) accessing the Case Website, (b) contacting the Claims Agent directly, or (c) contacting Debtors’ counsel directly.

8. Maintenance of the Core Service List. At least every fourteen (14) days during the first sixty (60) days of these Chapter 11 Cases, and thereafter at least once every thirty (30) days,



the Claims Agent shall maintain and update the Core Service List by (a) making any necessary additions and deletions, and (b) posting an updated version of the Core Service List on the Case Website. The Debtors' counsel must file a Core Service List with the Court every time it is updated.

9. Parties on the Core Service List. The Core Service List shall include the following parties:

- (a) the Debtor(s);
- (b) the Debtors' counsel;
- (c) the office of the United States Trustee for Region III;
- (d) the chairperson of any official committees established pursuant to section 1102 of the Bankruptcy Code;
- (e) counsel retained by any official committees established pursuant to section 1102 of the Bankruptcy Code, or counsel retained by the thirty (30) largest creditors if an official committee has not been appointed.
- (f) counsel to secured creditors, to include but not be limited to counsel to the DIP Agent;
- (g) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 in their capacity as counsel to the Ad Hoc First Lien Group, Attn: Scott J. Greenberg and Steven Domanowski; and
- (h) Any other person or entity as authorized by the Court.

10. Master Service List. Debtors' counsel or counsel to the trustee shall also maintain and update a master service list which shall be comprised of the Core Service List and the parties that have filed a 2002 Notice Request in the Debtor's case. Service on the persons/entities listed on the Master Service List shall be made only with respect to those matters enumerated in the Case Management Order. The Claims Agent must update the Master Service List at least every fourteen (14) days during the first sixty (60) days of the case and at least every thirty (30) days thereafter.



Further, the Debtors' counsel must file a Master Service List with the Court every thirty (30) days during these chapter 11 cases, only to the extent there are updates.

11. Requests for Documents. Any creditor or party in interest may enter an appearance and request receipt of all Court Filings pursuant to Bankruptcy Rule 2002 by filing a 2002 Notice Request with the Court and providing a copy of the 2002 Notice Request to (a) the Debtors and their counsel, and (b) the Claims Agent. Except as set forth in paragraph 13 below, a 2002 Notice Request filed with the Court shall be deemed proper if and only if it includes the following information with respect to the party filing such request: (a) the name, organization (if any), full street address (no P.O. boxes), phone number, fax number (if any), and email address (if any) of the party requesting service; (b) if made by an attorney, the party or parties that such attorney represents; and (c) a certification that a copy of the 2002 Notice Request has been provided to the Debtors and their counsel and the Claims Agent.

12. Certification Opting Out of Email Service. Any individual or entity filing a 2002 Notice Request who does not maintain (and cannot practicably obtain) an email address, and therefore cannot receive service by email, must include in the 2002 Notice Request a certification to that effect (the "Certification"). The Certification shall include a statement certifying that the individual or entity (a) does not maintain an email address, and (b) cannot practicably obtain an email address at which the individual or entity could receive service by email. Such individual or entity will thereafter receive paper service as provided in these Case Management Procedures.

13. No Email or Certification Provided. If a 2002 Notice Request fails to include an email address or a Certification, the Debtors shall forward a copy of these Case Management Procedures to such party within five (5) business days of receipt of service of the 2002 Notice Request and specifically request an email address and/or Certification. ***Until (a) an email address,***



*or (b) a Certification is provided in response to the Debtors' request, such party shall not be added to the 2002 List and shall not be served with copies of Court Filings filed in these Chapter 11 Cases unless such Court Filings directly affect such party.*

14. Service of Motions Required to Be Served on All Creditors and Parties in Interest.

With respect to Requests for Relief for which particular notices are required to be served on all creditors and parties in interest—including pursuant to Bankruptcy Rules 2002(a)(2), 2002(a)(3), 4001, 6004, 6007 and/or 9019—and subject to paragraph 16 below, parties shall serve all such filings by electronic mail (where available), except as otherwise provided in paragraphs 7 through 9 hereof, on the Core Service List and any Affected Entity.

15. All notices required by subdivisions Bankruptcy Rules 2002(a)(2), 2002(a)(3), 2002(a)(6), and 4001 shall be served upon:

- (a) each entity designated on the Core Service List;
- (b) when the notice is of a proposed use, sale, lease, or abandonment of property or of a hearing thereon, each entity designated on the most recent Master Service List and each entity having an interest in the property;
- (c) when the notice relates to relief from the stay in order to take action against property of the Debtors' Estate, each entity having a lien, encumbrance or interest in the subject property;
- (d) when the notice relates to use of cash collateral or obtaining credit, each entity who has an interest in the cash collateral or each entity who has a lien or other interest in property on which a lien is proposed to be granted;
- (e) when the notice is of a proposed compromise or settlement or of a hearing thereon, each entity designated on the most recent Master Service List and each entity who is a party to the compromise or settlement; and
- (f) when the notice is of an application for compensation or reimbursement of expenses or of a hearing thereon, each entity designated on the most recent Master Service List and each professional person who is seeking compensation or reimbursement whose retention in these Chapter 11 Cases is authorized by the Court.



16. Service by Email. All Court Filings shall be electronically filed using the ECF System and served via email (where available) as provided in these Case Management Procedures, which shall be deemed to constitute proper service for all parties who are sent such email service, provided, however, that notwithstanding the foregoing and paragraph 13 below, (a) a summons and complaint in an adversary proceeding shall not be served by email and (b) documents filed under seal shall not be served. In accordance with Bankruptcy Rule 9036, the “Notice of Electronic Filing” that is automatically generated and sent via email by the ECF System shall constitute proper, sufficient, and effective service by email for those parties who are, or whose agents are, registered attorney users of the ECF System (collectively, the “ECF System Users”). Therefore, a party filing a Court Filing that is served on the ECF System Users via the ECF System has no further obligation to serve such Court Filing on the ECF System Users, provided that service to an ECF System User shall not be effective if the filing party receives notice that service of the Court Filing did not reach the ECF System User.

- (a) Consent to Electronic Service. Each creditor or party in interest that files a 2002 Notice Request shall be deemed to have consented to service of all Court Filings solely by electronic transmission, unless such creditor or party in interest has included a Certification opting out of such service.
- (b) Email Subject Line. With respect to the service of any Court Filing, the subject line of the email shall include: (i) the Debtors’ case name and case number (*In re Cyxtera Technologies, Inc.*, Case No. 23-[●]); (ii) the name of the party serving such Court Filing and (iii) the title of the Court Filing being served. If the title of the Court Filing is too long to fit reasonably within the subject line of the email, the subject line shall contain a shortened version of such title and the text of the email shall contain the full name of such Court Filing.
- (c) Email Attachments. All Court Filings served by email shall include access to a computer file containing the entire document (including any proposed form of order and exhibits, attachments or other materials) in PDF format, readable by Adobe Acrobat or other equivalent document reader programs commonly available without cost. The relevant Court Filing shall either be attached to the email in a format specified above or the email shall contain a link to such filing in such format.



- (d) Effective Date of Service. Service by email on a party shall be effective as of the earlier of: (i) the date the Court Filing (or a notice stating that the Court Filing cannot be attached but is available on the ECF System or the Case Website) is transmitted by email to the address provided by such party; or (ii) the date the Court Filing is posted on the ECF System where service on such ECF System User via the ECF System is proper under these Case Management Procedures.

17. Certificates of Service. The certificate of service for each filing must be filed with the Court together with the complete Service List that was utilized and served for a particular filing but said certificate of service is not to be served via hard copy on the recipients of the filing.

18. Service in Adversary Proceedings. All filings in adversary proceedings shall be served, pursuant to Bankruptcy Rule 7005, upon all parties to the adversary proceeding, all parties known to have a particularized interest in the subject of such adversary proceeding, and the parties listed on the Core Service List. Any summons, complaint, or motion initiating an adversary proceeding shall be served in hard copy format, pursuant to Bankruptcy Rule 7004, upon the party or parties against whom relief is sought, all parties known to have a particularized interest in the subject of such proceeding, and the parties listed on the Core Service List. Absent leave of the Court, responsive pleadings shall be filed only by defendants in adversary proceedings and/or by parties in interest who seek to be joined or to dismiss for failure to join a necessary party.

19. Service of Orders. All parties submitting orders shall serve a confirmed copy of any entered order on the parties that were entitled to service of the underlying Request for Relief in accordance with these Case Management Procedures, except as otherwise provided by an order of the Court. The Claims Agent shall post all entered orders on the Case Website.

20. Service Upon United States Trustee. Pursuant to the General Order Governing Procedures for Complex Chapter 11 Cases, the Office of the United States Trustee for Region III—New Jersey Office requires service upon it of all pleadings and papers, including but not limited to, petitions, schedules, statements of financial affairs, plan, disclosure statement, and monthly



operating reports, in hard copy format regardless of whether the United States Trustee's Office receives same electronically.

21. Right to Request Special Notice Procedures. Nothing herein shall prejudice the rights of any party in interest to seek an amendment or waiver of the provisions of the Case Management Procedures upon a showing of good cause, including, without limitation, the right to file a motion seeking emergency ex parte relief or relief upon shortened notice.

**D. Additional Case Management Procedures**

22. Adequate Notice. Notice and service accomplished in accordance with the provisions set forth in these Case Management Procedures shall be deemed adequate in all respects pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

23. Computation of Time. Unless otherwise specified, all time periods referenced in these Case Management Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

24. Extensions of Time. Except as otherwise expressly set forth in any order entered in these Chapter 11 Cases, if a Motion to extend the time for a party to take any action is filed consistent with these Case Management Procedures before the expiration of the period prescribed by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or the provisions of any order entered by this Court, the time shall automatically be extended until the Court acts on the Motion, without the necessity for the entry of a bridge order. If the Court denies such Motion to extend, then the applicable action must be completed no later than 5:00 p.m., prevailing Eastern Time, on the first business day after the Court enters such order.

25. Effect of the Case Management Procedures. The Bankruptcy Rules and the Local Rules shall continue to apply to all proceedings in these Chapter 11 Cases, except to the extent that



any provision of these Case Management Procedures by its terms supersedes or is inconsistent with such rules.

26. Modification of Order. Any party may at any time apply for reconsideration or modification of the Order approving these Case Management Procedures. Service of said motion shall be made to all persons/entities on the Master Service List. The Court may amend Case Management Procedures from time to time as is necessary.




This is **Exhibit "U"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DEBTORS' APPLICATION FOR ENTRY OF  
AN ORDER (I) AUTHORIZING THE APPOINTMENT OF  
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT  
EFFECTIVE AS OF THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> 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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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this application (the “Application”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), (a) authorizing the Debtors to appoint Kurtzman Carson Consultants LLC (“KCC”) as the claims and noticing agent (the “Claims and Noticing Agent”) in the Debtors’ chapter 11 cases effective as of the Petition Date (as defined herein) pursuant to the terms and conditions of that certain services agreement dated April 29, 2023, by and between the Debtors and KCC (the “Services Agreement”) attached to **Exhibit A** as Exhibit 1 and (b) granting related relief. In support of this Application, the Debtors submit the Declaration of Evan J. Gershbein, Executive Vice President of KCC (the “Gershbein Declaration”), attached hereto as **Exhibit B**.

**Jurisdiction and Venue**

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

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Application have the meaning ascribed to them in the First Day Declaration.



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

4. The bases for the relief requested herein is section 156(c) of title 11 of the United States Code (the “Bankruptcy Code”) and rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”)

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.



No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **KCC's Qualifications**

7. KCC is a leading chapter 11 administrator and comprises industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC has acted as official claims and noticing agent in many large bankruptcy cases in this district and others. *See, e.g., In re Cloudeeva, Inc.*, No. 14-24874 (KCF) (Bankr. D.N.J. July 24, 2014) (authorizing employment and retention of KCC as debtors' claims and noticing agent); *In re RIH Acquisitions NJ, LLC*, No. 13-34483 (GMB) (Bankr. D.N.J. Nov. 8, 2013) (same); *In re Wave2Wave Comms., Inc.*, No. 12-13896 (DHS) (Bankr. D.N.J. Mar. 29, 2012) (same); *In re the Newark Group, Inc.*, No. 10-27694 (NLW) (Bankr. D.N.J. June 6, 2010) (same); *In re Adamar of New Jersey, Inc.*, No. 09-20711 (JHW) (Bankr. D.N.J. May 1, 2009) (same); *In re Tarragon Corp.*, No. 09-10555 (DHS) (Bankr. D.N.J. Jan. 19, 2009) (same); *In re Avaya Inc.*, No. 23-90088 (DRJ) (Bankr. S.D. Tex. Feb. 14, 2023) (same); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same); *In re First Guaranty Mortgage Corp.*, No. 22-10584 (CTG) (Bankr. D. Del. July 1, 2022) (same); *In re Philippine Airlines, Inc.*, No. 21-11569 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2021) (same); *In re Superior Energy Services, Inc.*, No. 20-35812 (DRJ) (Bankr. S.D. Tex. Dec. 8, 2020) (same); *In re Oasis Petroleum Inc.*, No. 20-34771 (MI) (Bankr. S.D. Tex. Sept. 8, 2020) (same); *In re Briggs & Stratton Corp.*, No. 20-43597-399 (BSS) (Bankr. E.D. Mo. Aug. 20, 2020) (same); *In re Hi-Crush Inc.*, No. 20-33495 (DRJ) (Bankr. S.D. Tex. July 13, 2020) (same); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. June 16, 2020) (same); *In re Skillsoft Corp.*, No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020) (same); *In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. May 13, 2020) (same); *In re Speedcast International Limited*, No. 20-32243 (MI) (Bankr.



S.D. Tex. Apr. 24, 2020) (same); *In re the McClatchy Company*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. Feb. 14, 2020) (same); *In re Halcon Resources Corp.*, No. 19-34446 (DRJ) (Bankr. S.D. Tex. Aug. 7, 2019) (same); *In re Legacy Reserves Inc.*, No. 19-33395 (MI) (Bankr. S.D. Tex. June 6, 2019) (same); *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (same); *In re Waypoint Leasing Holdings Ltd.*, No. 18-13648 (SMB) (Bankr. S.D.N.Y. Nov. 27, 2018) (same); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) (same).

8. Appointing KCC as the Claims and Noticing Agent in these chapter 11 cases will expedite and maximize the efficiency of the distribution of notices and the processing of claims, as well as relieve the Office of the Clerk of the Bankruptcy Court of the District of New Jersey (the “Clerk”) of the administrative burden of processing an overwhelming number of claims. Prior to selecting KCC as their Claims and Noticing Agent, the Debtors solicited and reviewed engagement proposals from two other Court-approved claims and noticing agents to ensure selection through a competitive process. The Debtors submit that KCC’s rates are competitive and reasonable given KCC’s quality of services and expertise. The terms of KCC’s engagement are set forth in the Services Agreement.

#### **Services to Be Provided by KCC**

9. This Application pertains only to the work to be performed by KCC under the Clerk’s delegation of duties as permitted by 28 U.S.C. § 156(c). Any work to be performed by KCC outside of this scope is not covered by this Application or by any order of the Court granting approval hereof.<sup>3</sup>

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<sup>3</sup> As noted above, the Debtors plan to seek authorization to retain and employ KCC as administrative advisor in these chapter 11 cases by separate application pursuant to section 327(a) of the Bankruptcy Code because the



10. Subject to the Court's approval, at the request of the Debtors, and to the extent necessary, KCC will perform the following tasks in its role as the Claims and Noticing Agent in these chapter 11 cases (collectively, the "Claims and Noticing Services"), as well as all quality control relating thereto:

- (a) preparing and serving required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors or the Court, including, without limitation: (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code (if any); (ii) notice of any claims bar date; (iii) notices of transfers of claims; (iv) notices of objections to claims and objections to transfers of claims; (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' chapter 11 plan or plans, including under Bankruptcy Rule 3017(d); (vi) notice of the effective date of any plan; and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- (b) if necessary, maintaining an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules"), listing the Debtors' known creditors and the amounts owed thereto;
- (c) maintaining a (i) list of all potential creditors, equity holders, and other parties in interest and (ii) "core" service list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k), and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010, and updating said lists and making said lists available upon request by a party-in-interest or the Clerk;
- (d) if necessary, furnishing a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notifying such potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in

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administration of these chapter 11 cases will require KCC to perform duties outside the scope of 28 U.S.C. § 156(c).



cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;

- (e) maintaining a post office box or address for the purpose of receiving claims and returned mail, and processing all mail received;
- (f) for all notices, motions, orders, or other pleadings or documents served, preparing and filing, or causing to be filed, with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes: (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served; (ii) a list of persons to whom it was served (in alphabetical order) with their mailing or email addresses as appropriate; (iii) the manner of service; and (iv) the date served;
- (g) processing all proofs of claim received, including those received by the Clerk, checking said processing for accuracy, and maintaining the original proofs of claim in a secure area;
- (h) providing an electronic interface for filing proofs of claim;
- (i) maintaining the official claims register for each Debtor (collectively, the “Claims Registers”) on behalf of the Clerk, and, upon the Clerk’s request, providing the Clerk with certified, duplicate unofficial Claims Registers;
- (j) specifying in the Claims Registers the following information for each claim docketed: (i) the claim number assigned; (ii) the date received; (iii) the name and address of the claimant and agent, if applicable, who filed the claim; (iv) the amount asserted; (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, etc.); (vi) the applicable Debtor; and (vii) any disposition of the claim;
- (k) providing public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- (l) implementing necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (m) recording all transfers of claims and providing any notices of such transfers, as required by Bankruptcy Rule 3001(e);
- (n) relocating, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of KCC, not less than weekly;



- (o) upon completion of the docketing process for all claims received to date for each case, turning over to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- (p) monitoring the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and making necessary notations on or changes to the Claims Registers and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (q) assisting in the dissemination of information to the public and responding to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website or call center;
- (r) if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contacting the Clerk's office within three (3) days of KCC receiving notice to KCC of entry of the order converting the cases;
- (s) thirty (30) days prior to the close of these chapter 11 cases, to the extent practicable, requesting that the Debtors submit to the Court a proposed order dismissing KCC as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- (t) within seven (7) days of notice to KCC of entry of an order closing these chapter 11 cases, providing to the Court the final version of the Claims Registers as of the date immediately before the close of the chapter 11 cases; and
- (u) at the close of these chapter 11 cases: (i) boxing and transporting all original documents, in proper format, as provided by the Clerk, to (1) the Philadelphia Federal Records Center, located at 14700 Townsend Road, Philadelphia, PA 19154, or (2) any other location requested by the Clerk.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by KCC.

#### **Professional Compensation**

12. The Debtors respectfully request that the undisputed fees and expenses incurred by KCC in the performance of the Claims and Noticing Services in accordance with the terms of the



Services Agreement be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court.

13. KCC agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred. KCC further agrees to serve monthly invoices on (a) the Debtors, (b) the Office of the United States Trustee for the District of New Jersey (the "U.S. Trustee"), (c) counsel for the Debtors, (d) counsel for any official committee appointed to monitor the expenses of the Debtors in these chapter 11 cases, and (e) any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Services Agreement or the monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute. If a resolution is not achieved, the parties may seek resolution of the matter from the Court.

14. Prior to the Petition Date, the Debtors provided KCC a retainer in the amount of \$60,000. KCC seeks to first apply the retainer to all prepetition invoices and, thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Services Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Services Agreement.

15. Additionally, under the terms of the Services Agreement, the Debtors have agreed to indemnify, defend, and hold harmless KCC and its affiliates, members, directors, officers, employees, consultants, subcontractors, and agents under certain circumstances specified in the Services Agreement, except in circumstances resulting solely from KCC's gross negligence or willful misconduct or as otherwise provided in the Services Agreement or any order authorizing the employment and retention of KCC. The Debtors believe that such an indemnification



obligation is customary, reasonable, and necessary to retain the services of a claims and noticing agent in these chapter 11 cases.

**KCC's Disinterestedness**

16. Although the Debtors do not propose to employ KCC under section 327 of the Bankruptcy Code pursuant to this Application, KCC has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and the Debtors have been advised that, to the best of KCC's knowledge, information and belief, and except as disclosed in the Gershbein Declaration, KCC has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

17. Moreover, in connection with its retention as Claims and Noticing Agent, KCC represents in the Gershbein Declaration, among other things, that:

- (a) KCC is not a creditor of the Debtors;
- (b) KCC is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code;
- (c) KCC will not consider itself employed by the United States government and will not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- (d) by accepting employment in these chapter 11 cases, KCC waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- (e) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (f) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;



- (g) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, KCC will not intentionally misrepresent any fact to any person;
- (h) KCC shall be under the supervision and control of the Clerk with respect to the receipt and recordation of claims and claim transfers;
- (i) KCC will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) none of the services provided by KCC as the Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk.

18. If any new facts or circumstances are discovered that require additional disclosure, KCC will supplement its disclosure to the Court.

### **Basis for Relief Requested**

#### **I. Retention and Employment of KCC as Claims and Noticing Agent Is Permitted.**

19. Bankruptcy Rule 2002 generally regulates what notices must be given to creditors and other parties in interest in bankruptcy cases. Fed. R. Bankr. P. 2002(f). Under Bankruptcy Rule 2002(f), the Court may direct that some person other than the Clerk give notice of the various matters described below. Moreover, section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use “facilities” or “services” other than the Clerk for administration of bankruptcy cases. 28 U.S.C. § 156(c). Specifically, the statute states, in relevant part:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).



20. Accordingly, Bankruptcy Rule 2002, and section 156(c) of title 28 of the United States Code empower the Court to utilize outside agents and facilities for notice and claims purposes, provided that the Debtors' estates bear the cost of such services.

21. For all of the foregoing reasons, the Debtors believe that the retention of KCC as the Claims and Noticing Agent in these in the chapter 11 cases is necessary and in the best interests of the Debtors, their estates and creditors, and all parties in interest. Furthermore, the Debtors respectfully submit that the fees and expenses that would be incurred by KCC under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

22. By separate application, the Debtors intend to seek authorization to retain and employ KCC as the administrative agent in these chapter 11 cases, pursuant to section 327(a) of the Bankruptcy Code, because the administration of the chapter 11 cases will require KCC to perform duties outside the scope of 28 U.S.C. § 156(c).

## **II. Relief Effective as of the Petition Date Is Appropriate.**

23. Pursuant to the Debtors' request, KCC has agreed to serve as the Claims and Noticing Agent on and after the Petition Date with assurances that the Debtors would seek approval of its employment and retention effective as of the Petition Date, so that KCC may be compensated for its services prior to approval of this Application. Such relief is appropriate in light of 28 U.S.C. § 156(c) and in order to relieve the Court and the Clerk's office of the heavy administrative burdens these chapter 11 cases stand to impose. The Debtors believe that no party in interest will be prejudiced by granting the employment effective as of the Petition Date, as provided in this Application, because KCC has provided and continues to provide valuable services to the Debtors' estates in the interim period. In view of the number of anticipated claimants and the complexity of these chapter 11 cases, the Debtors submit that the appointment



of a Claims and Noticing Agent is in the best interests of the Debtors' estates, their creditors, and all parties in interest.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

24. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Application, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The appointment of KCC as Claims and Noticing Agent is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Request of Waiver of Stay**

25. To the extent that the relief sought in the Application constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Application is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

26. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to 9013-1(a)(3) of the Local Bankruptcy Rules for the



District of New Jersey (the “Local Rules”) because the legal basis upon which the Debtors rely is set forth herein and the Application does not raise any novel issues of law.

**No Prior Request**

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

**Notice**

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



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

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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



**ORDER (I) AUTHORIZING THE APPOINTMENT OF KURTZMAN  
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT  
EFFECTIVE AS OF THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

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



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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief

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Upon the *Debtors' Application for Entry of an Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief* (the "Application"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing the Debtors to employ and retain Kurtzman Carson Consultants LLC ("KCC") as claims and noticing agent in the Debtors' chapter 11 cases (the "Claims and Noticing Agent") effective as of the Petition Date, all as more fully set forth in the Application; and upon the First Day Declaration; and the Court having jurisdiction to consider the Application 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 Application 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 Application was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application 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 Application establish just cause for the relief granted herein; and upon all of the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Application.



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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief

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proceedings had before the Court and after due deliberation and sufficient cause appearing therefor

**IT IS HEREBY ORDERED THAT:**

1. The Application is **GRANTED** as set forth herein.
2. The Debtors are authorized to retain KCC as Claims and Noticing Agent, effective as to the Petition Date, pursuant to the terms of the Services Agreement, in the form attached hereto as Exhibit 1, and KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application (collectively, the “Claims and Noticing Services”).
3. Any services KCC will provide relating to the Debtors’ schedules of assets and liabilities and statements of financial affairs shall be limited to administrative and ministerial services. The Debtors shall remain responsible for the content and accuracy of their schedules of assets and liabilities and statements of financial affairs.
4. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases (if any) and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.
5. KCC is authorized and directed to provide public access to every proof of claim unless otherwise ordered by the Court and to obtain a post office box or address for the receipt of proofs of claim (if necessary).



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief

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6. KCC is authorized to take such other action to comply with all duties set forth in the Application.

7. The Debtors are authorized to compensate KCC for the Claims and Noticing Services in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek this Court's approval for the compensation of its services and reimbursement of its expenses.

8. KCC shall maintain records of all services performed, showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on (a) the Debtors, (b) the U.S. Trustee, (c) counsel to the Debtors, (d) counsel to any official committee appointed to monitor the expenses of the Debtors in these chapter 11 cases, and (e) any party-in-interest who specifically requests service of the monthly invoices.

9. Parties shall have ten (10) days from receipt of the invoice to review such invoice and raise any objections, either formally through the filing of an objection with the Court or informally through a writing served on KCC, to the fees and expenses being requested by KCC. If an objection is interposed, the parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or KCC's monthly invoices; *provided* that the parties may seek resolution of the matter from the Court if such efforts prove unsuccessful. If no objection has been raised, the Debtors are authorized to pay KCC the full amount of the requested fees and expenses upon expiration of the ten (10) day review without further order of the Court.



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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief

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If an objection has been raised, the Debtors may not pay the objected to amount pending agreement of the parties or entry of an order of this Court authorizing payment.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount and, thereafter, KCC may hold the retainer under the Services Agreement during the cases as security for the payment of fees and expenses incurred under the Services Agreement.

11. The Debtors shall indemnify KCC under the terms of the Services Agreement, as modified by this Order.

12. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the Claims and Noticing Services, as provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefore is approved by this Court.

13. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any losses, claims, damages, judgments, liabilities or expense that are either: (a) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (b) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations, if this Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *United Artists Theatre Co. v. Walton* (*In re United Artists Theatre Co.*), 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial



(Page | 7)

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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief

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determination under subsection (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal) or (b) the entry of an order closing these chapter 11 cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, KCC must file an application in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving such application and the payment requested therein. This paragraph is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement.

15. In the event KCC is unable to provide the Claims and Noticing Services, KCC will immediately notify the Clerk and the Debtors' counsel and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' counsel.



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

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief

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16. KCC declares that it does not now have, nor has it ever had any contract or agreement with XClaim Inc. or with any other party under which KCC provides, provided, or will provide exclusive access to claims data and/or under which KCC would be compensated for claims data made available by KCC.

17. Notwithstanding anything to the contrary contained in the Application, the Gershbein Declaration, or the Services Agreement, including section VIII thereof, by this Order, the Court is not authorizing KCC to establish financial accounts with financial institutions on behalf of the Debtors.

18. Notwithstanding anything to the contrary contained in the Application, the Gershbein Declaration, or Services Agreement, the 1.5% late charge in section II(E) of the Services Agreement shall be of no force or effect during the pendency of these cases.

19. Notwithstanding anything to the contrary in the Application, the Gershbein Declaration, and the Services Agreement, KCC will provide the Debtors and the U.S. Trustee with three (3) business days prior written notice and an opportunity to object to any assignment of the rights and duties under the Services Agreement as provided in section XVI of the Services Agreement.

20. Notwithstanding anything to the contrary contained in the Application, the Gershbein Declaration, or the Services Agreement, including paragraph II(A) thereof, KCC shall provide at least ten (10) days' notice of any increases in its billing rates, subject to the parties in interest's right to object to any such increases.



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

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21. The Debtors may submit a separate retention application, pursuant to section 327(a) of the Bankruptcy Code or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

22. Notwithstanding any term in the Application, the Gershbein Declaration, or the Services Agreement to the contrary, during the chapter 11 cases, any limitation of liability including, but not limited to, section IX of the Services Agreement shall be of no force or effect.

23. KCC shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without an order of this Court.

24. The Debtors and KCC are authorized to take all steps necessary or appropriate to carry out this Order.

25. In the event of any inconsistency between the Services Agreement, the Application, the Gershbein Declaration, and this Order, the terms of this Order shall govern.

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

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

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



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

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29. 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 Application or otherwise waived.

30. 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**

**Services Agreement**





## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 29 day of April 2023, between Cyxtera Technologies Inc. (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.





## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and





## KCC AGREEMENT FOR SERVICES

orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$60,000 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency





## KCC AGREEMENT FOR SERVICES

or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.





## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or





## KCC AGREEMENT FOR SERVICES

express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC	Company
222 N. Pacific Coast Highway, 3rd Floor	Address
El Segundo, CA 90245	City, ST Zip
Attn: Drake D. Foster	Attn:
Tel: (310) 823-9000	Tel:
Fax: (310) 823-9133	Fax:
E-Mail: dfoster@kccellc.com	

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement





## KCC AGREEMENT FOR SERVICES

between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]





## KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

DocuSigned by:

*Evan Gershbein*

C7E04A3ECF0044D...

BY: Evan Gershbein

DATE: 30-Apr-2023 | 9:28:30 PM EDT

TITLE: EVP, Corporate Restructuring Services

Company

*Tector Jemah*

4/30/23

BY:

DATE:

TITLE:





## Fee Structure

### Consulting Services & Rates<sup>1</sup>

Position	Hourly Rate
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Analyst	\$30 - \$60
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The Analyst processes incoming mail, including proofs of claim, ballots, creditor correspondence and returned mail. Also assists with the generation of mailing services.

Technology/Programming Consultant <sup>2</sup>	\$35 - \$95
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The Technology/Programming Consultant assists with complex system requests, including unique claim/ballot reporting and custom website updates.

Consultant/Senior Consultant/Director	\$85 - \$245
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The Consultant is the day-to-day contact for mailings, including the preparation and filing of affidavits of service (a critical due process component). He/she also responds to creditor and counsel inquiries, maintains the public access website, identifies actionable pleadings (i.e., claims objections, notices of transfer, withdrawals, etc.) and updates the official claims register. KCC's Consultants average over six years of experience.

The Senior Consultant manages the various data collection processes required by the chapter 11 process. This includes, among other things, compiling the creditor matrix and Schedules/SOFAs (and generating drafts of same for counsel and advisors), reviewing and processing claims, overseeing contract review, overseeing all mailings and generating custom claim and ballot reports. KCC's Senior Consultants average over seven years of experience.

The Director is the primary contact for the company, counsel and other professionals and oversees and supports the entirety of an engagement. KCC's Directors average over twelve years of experience and are generally former practitioners.

Securities/Solicitation Consultant	\$250
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The Securities Director/Solicitation Consultant is the day-to-day contact and acts as advisor on transactions including balloting with treatment election, rights offers, exchange offers and complex plan distributions. This position handles service of related materials to banks, brokers and agents and manages tabulation and audit processes, preparing detailed reporting of results. In addition, the Solicitation Consultant provides support on all voting, tabulation, Schedule and SOFA services and other additional complex consulting tasks.

Securities Director/Solicitation Lead	\$255
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The Solicitation Lead/Securities Director oversees all activities of the group and provides counsel with respect to solicitation and noticing events ensuring that processes employed are effective and practical for securities depositories, bank, brokers, nominees and their agents. In addition, the Solicitation Lead provides counsel on all voting, tabulation, Schedule and SOFA services and other additional complex consulting tasks.

Weekend, holidays and overtime	Waived
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<sup>1</sup> Please note that additional professional services not covered by this proposal will be charged at hourly rates, including any outsourced services performed under our supervision and control. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

<sup>2</sup> Certain technology development fees may be applicable.





## Fee Structure

Printing Services & Noticing Services	
Printing	\$0.10 per image (volume discounts apply)
Document folding and inserting	Waived
Envelopes	Varies by size
E-mail noticing	Waived <sup>3</sup>
Fax noticing	\$0.05 per page
Public Securities Events	Varies by Event
Claim Acknowledgement Card	Waived
Insert creditor information into customized documents	Waived
Newspaper and legal notice publishing	Quote prior to publishing

Claims Administration & Management Expenses	
License fee and data storage	\$0.10 per record per month
Database and system access (unlimited users)	Waived
Custom client reports	Waived
Access to KCC CaseView (secure, password protected)	Waived
<ul style="list-style-type: none"> <li>• Proprietary, secured, password protected portal for unlimited users</li> <li>• Comprehensive case data, including extensive real time analytics on claim, solicitation and processing information</li> <li>• Functionality to run or request customized reports summarizing case analytics</li> </ul>	

KCC eServices	
Case website set up & hosting	Waived
Automated updates of case docket and claims register	Waived
Online claims filing (ePOC)	Waived

Document Management/Imaging	
Electronic imaging (scanning & bar coding)	\$0.10 per imaged page
Virtual Data Room	Quote prior to VDR set-up
CD-ROMS (mass document storage)	Varies upon requirements

<sup>3</sup> A set-up fee for email services larger than 50 parties may apply. This set-up fee varies depending on the total number of parties.



## Fee Structure



Call Center Support Services	
Case-specific voice-mail box for creditors	Waived
Interactive Voice Response ("IVR")	Set-up and per minute fee waived
Monthly maintenance charge	Waived
Management of Call Center	Standard hourly rates
Disbursements	
Check issuance	Quote prior to printing
W-9 mailing and maintenance of TIN database	See hourly rates and noticing charges



**Exhibit B**

**Gershbein Declaration**



**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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

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

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

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New York, New York 10022

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**COLE SCHOTZ P.C.**

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

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

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

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF EVAN J. GERSHBEIN  
IN SUPPORT OF DEBTORS' APPLICATION FOR ENTRY OF AN  
ORDER (I) AUTHORIZING THE APPOINTMENT OF KURTZMAN  
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT  
EFFECTIVE AS OF THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> 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.



I, Evan J. Gershbein, being duly sworn, state the following under penalty of perjury:

1. I am the Executive Vice President of Kurtzman Carson Consultants LLC (“KCC”), whose offices are located at 222 N. Pacific Coast Hwy, 3<sup>rd</sup> Floor, El Segundo, CA 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (this “Declaration”) is made in support of the *Debtors’ Application for Entry of an Order (I) Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date and (II) Granting Related Relief* (the “Application”).<sup>2</sup>

3. KCC is a leading chapter 11 administrator and comprises industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC has acted as official claims and noticing agent in many large bankruptcy cases in this district and others. *See, e.g., In re Cloudeeva, Inc.*, No. 14-24874 (KCF) (Bankr. D.N.J. July 24, 2014) (authorizing employment and retention of KCC as debtors’ claims and noticing agent); *In re RIH Acquisitions NJ, LLC*, No. 13-34483 (GMB) (Bankr. D.N.J. Nov. 8, 2013) (same); *In re Wave2Wave Comms., Inc.*, No. 12-13896 (DHS) (Bankr. D.N.J. Mar. 29, 2012) (same); *In re the Newark Group, Inc.*, No. 10-27694 (NLW) (Bankr. D.N.J. June 6, 2010) (same); *In re Adamar of New Jersey, Inc.*, No. 09-20711 (JHW) (Bankr. D.N.J. May 1, 2009) (same); *In re Tarragon Corp.*, No. 09-10555 (DHS) (Bankr. D.N.J. Jan. 19, 2009) (same); *In re Avaya Inc.*, No. 23-90088 (DRJ) (Bankr. S.D. Tex. Feb. 14, 2023) (same); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same); *In re First Guaranty*

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<sup>2</sup> Capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to them in the Application.



*Mortgage Corp.*, No. 22-10584 (CTG) (Bankr. D. Del. July 1, 2022) (same); *In re Philippine Airlines, Inc.*, No. 21-11569 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2021) (same); *In re Superior Energy Services, Inc.*, No. 20-35812 (DRJ) (Bankr. S.D. Tex. Dec. 8, 2020) (same); *In re Oasis Petroleum Inc.*, No. 20-34771 (MI) (Bankr. S.D. Tex. Sept. 8, 2020) (same); *In re Briggs & Stratton Corp.*, No. 20-43597-399 (BSS) (Bankr. E.D. Mo. Aug. 20, 2020) (same); *In re Hi-Crush Inc.*, No. 20-33495 (DRJ) (Bankr. S.D. Tex. July 13, 2020) (same); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. June 16, 2020) (same); *In re Skillsoft Corp.*, No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020) (same); *In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. May 13, 2020) (same); *In re Speedcast International Limited*, No. 20-32243 (MI) (Bankr. S.D. Tex. Apr. 24, 2020) (same); *In re the McClatchy Company*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. Feb. 14, 2020) (same); *In re Halcon Resources Corp.*, No. 19-34446 (DRJ) (Bankr. S.D. Tex. Aug. 7, 2019) (same); *In re Legacy Reserves Inc.*, No. 19-33395 (MI) (Bankr. S.D. Tex. June 6, 2019) (same); *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (same); *In re Waypoint Leasing Holdings Ltd.*, No. 18-13648 (SMB) (Bankr. S.D.N.Y. Nov. 27, 2018) (same); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) (same).

4. As agent and custodian of the Court records pursuant to 28 U.S.C. § 156(c), KCC will perform at the request of the Clerk's office the noticing and claims-related services specified in the Application. In addition, at the Debtors' request, KCC will perform such other noticing, claims, technical, administrative, and support services specified in the Application, subject to 28 U.S.C. § 156(c).

5. KCC represents, among other things, the following:

(a) KCC is not a creditor of the Debtors;



- (b) KCC is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code;
- (c) KCC will not consider itself employed by the United States government and will not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- (d) by accepting employment in these chapter 11 cases, KCC waives any rights to receive compensation from the United States government as claims and noticing agent;
- (e) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (f) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- (g) in its capacity as Claims and Noticing Agent in these chapter 11 cases, KCC will not intentionally misrepresent any fact to any person;
- (h) KCC will be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- (i) KCC will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) none of the services provided by KCC as Claims and Noticing Agent will be at the expense of the Clerk’s office.

6. Although the Debtors do not propose to retain KCC under section 327(a) of the Bankruptcy Code pursuant to the Application,<sup>3</sup> I caused to be submitted for review by our conflicts system the names of all known potential parties-in-interest (the “Potential Parties in Interest”) in these chapter 11 cases. The list of Potential Parties in Interest was provided by the Debtors and

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<sup>3</sup> As stated in the Application, such retention will be sought by separate application.



included, among other things, the Debtors, non-Debtor affiliates, significant equity holders, the Debtors' current and former directors and officers, secured creditors, top thirty unsecured creditors, vendors, and other parties. The results of the conflict check were compiled and reviewed by KCC professionals under my supervision. At this time, and as set forth in further detail herein, KCC is not aware of any relationship that would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to promptly file a supplemental declaration.

7. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither KCC, nor any of its professionals, has any materially adverse connection to the Debtors, their creditors or other relevant parties. KCC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent or administrative advisor for another chapter 11 debtor.

8. On May 1, 2023, KCC was acquired by GCP Capital Partners ("GCP"), a leading middle market private equity firm. The Potential Parties in Interest list was compared to an internal database that includes, among others, KCC's parent entities, affiliates, and subsidiaries. KCC's internal database also includes GCP, its funds, and GCP's portfolio companies. Based on this review, KCC is not aware of any connection that would present a disqualifying conflict of interest. To the extent KCC learns of any material connections between GCP's funds or investments and the Debtors, KCC will promptly file a supplemental disclosure. KCC may have had, may currently have, or may in the future have business relationships unrelated to the Debtors with one or more GCP entities including, among others, portfolio companies of GCP.



9. KCC has and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, KCC and its personnel have and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' chapter 11 cases. KCC may also provide professional services to entities or persons that may be creditors or parties in interest in these chapter 11 cases, which services do not directly relate to, or have any direct connection with, these chapter 11 cases or the Debtors.

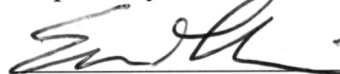
10. KCC may have relationships with other professionals to be retained by the Debtors. Certain former partners and associates of Kirkland & Ellis LLP ("K&E"), proposed counsel to the Debtors, currently are employed by KCC. Albert Kass, KCC's Senior Executive Vice President of Corporate Restructuring Services, is a former K&E associate. Mr. Kass' work at K&E was unrelated to the Debtors and these chapter 11 cases. Beth Friedman, a Senior Director with KCC's Corporate Restructuring Services, is a former K&E Restructuring Department Coordinator. Adam Gorman, a Director with KCC's Corporate Restructuring Services, is a former K&E project assistant.

11. To the best of my knowledge, neither KCC nor any of its partners or employees represents any interest materially adverse to the Debtors' estates with respect to any matter upon which KCC is to be engaged. Based on the foregoing, I believe that KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Respectfully submitted,



Dated: June 4, 2023  
Newark, New Jersey

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Evan J. Gershbein  
Executive Vice President, Corporate Restructuring  
Kurtzman Carson Consultants LLC

*Proposed Claims and Noticing Agent of the Debtors and  
Debtors in Possession*




This is **Exhibit "V"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY  
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE  
DEBTORS TO (A) FILE A CONSOLIDATED LIST OF THE DEBTORS'  
30 LARGEST UNSECURED CREDITORS, (B) FILE A CONSOLIDATED**

<sup>1</sup> 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.





**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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and “Final Order,” respectively): (a) authorizing, but not directing, the Debtors to (i) file a consolidated list of the Debtors’ thirty (30) largest unsecured creditors in lieu of filing separate creditor 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. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of*

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



*Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 107(c), and 521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 1007, 2002, 9007, and 9037 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 1007-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam,



Singapore, Tokyo, and Germany.

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

### **Basis for Relief**

#### **I. Cause Exists to Authorize the Debtors to File a Single Consolidated List of Top 30 Unsecured Creditors and Prepare a List of Creditors in Lieu of Filing a Separate Mailing Matrix for Each Debtor.**

7. Section 521(a) of the Bankruptcy Code and Bankruptcy Rule 1007(a)(1) require a debtor in a voluntary chapter 11 case to file a list containing the name and complete address of each of the debtors’ creditors. *See* 11 U.S.C. § 521(a); Fed. R. Bankr. P. 1007(a)(1). Additionally, Bankruptcy Rule 1007(d) provides that a debtor shall file “a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders.” Fed. R. Bank. P. 1007(d). This list is primarily used by the United States Trustee for the District of New Jersey (the “U.S. Trustee”) to evaluate the types and amounts of unsecured claims against a debtor and, thereby, identify potential candidates to serve on an official committee of unsecured creditors appointed in a debtor’s case pursuant to section 1102 of the Bankruptcy Code.

8. The Debtors request authority to file a single list of their thirty (30) largest general unsecured creditors on a consolidated basis (the “Top 30 List”).<sup>3</sup> Because the top creditor lists for

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<sup>3</sup> The Debtors submit that if any of these chapter 11 cases converts to a case under chapter 7 of the Bankruptcy Code, the applicable Debtor will file an unconsolidated Top 30 List within ten days of any such



each individual Debtor overlap, the Debtors submit that filing separate lists for each Debtor would be of limited utility. In addition, the exercise of compiling separate top creditor lists for each individual Debtor could consume an excessive amount of the Debtors', and their advisors', limited time and resources. The Debtors believe that the Top 30 List will better aid the U.S. Trustee in the efforts to communicate with these creditors.

9. Allowing the Debtors to prepare and maintain a consolidated list of their creditors (the "Consolidated Creditor Matrix"), in lieu of filing a separate creditor matrix for each Debtor, is warranted under the circumstances of these chapter 11 cases where there are thousands of creditors and parties in interest. Converting the Debtors' computerized information to a format compatible with the matrix requirements, as well as the preparation of separate lists of creditors for each Debtor would be expensive, time consuming, administratively burdensome, and increase the risk of error with respect to information already on computer systems maintained by the Debtors or their agents. Accordingly, the Debtors respectfully request authority to file one Consolidated Creditor Matrix for all Debtors.

10. The Debtors, working together with Kurtzman Carson Consultants LLC ("KCC") as their proposed claims and noticing agent in these chapter 11 cases (the "Proposed Claims and Noticing Agent"), have already prepared a single, consolidated list of the Debtors' creditors in electronic format. The Debtors are prepared to make the Consolidated Creditor Matrix available in electronic form to any party in interest who so requests (or in non-electronic form at such

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conversion.



requesting party's sole cost and expense), and the Debtors intend to file a copy of the Consolidated Creditor Matrix on the docket.

11. Courts in this jurisdiction have granted relief similar to the relief requested herein. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 17, 2023) (authorizing a consolidated list of the debtors' 30 largest unsecured creditors); *In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 19, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 30, 2022) (authorizing a consolidated list of the debtors' 50 largest unsecured creditors); *In re Nat'l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. June 9, 2022) (authorizing a consolidated list of the debtors' 30 largest unsecured creditors); *In re Christopher & Banks Corp.*, No. 21-10269 (ABA) (Bankr. D.N.J. Jan. 15, 2021) (authorizing a consolidated list of the debtors' 20 largest unsecured creditors).<sup>4</sup>

12. Accordingly, the Debtors submit that filing a Top 30 List and a Consolidated Creditor Matrix is necessary for the efficient and orderly administration of these chapter 11 cases, appropriate under the facts and circumstances, and in the best interests of the Debtors' estates.

## **II. Redaction of Certain Confidential Information of Individuals Is Warranted.**

13. Section 107(c) of the Bankruptcy Code provides that the Court:

for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(A) Any means of identification . . . contained in a paper filed, or to be filed in a case under [the Bankruptcy Code].

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.



(B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1).

14. In addition, privacy and data protection regulations have been enacted in key jurisdictions in which the Debtors and non-Debtor affiliates do business. The United Kingdom Data Protection Act of 2018 and the United Kingdom General Data Protection Regulation (together, the “UK GDPR”), the European General Data Protection Regulation (the “EU GDPR”), and similar laws in other jurisdictions, impose significant constraints on the processing (which includes the transferring or disclosing) of information relating to identified or identifiable individuals (which includes names and home addresses of individuals and individual business contacts) (“Personal Data”). The UK GDPR and EU GDPR apply to the processing of Personal Data in the context of an establishment of a controller or processor in the United Kingdom, regardless of whether the processing takes place in the United Kingdom, or the European Economic Area, regardless of whether the processing takes place in the European Economic Area (and, in some circumstances, organizations established in other countries when processing Personal Data relating to individuals located in the United Kingdom or European Economic Area).

15. The UK GDPR and EU GDPR require a legal basis for any processing (including disclosure) of Personal Data. The only possible legal basis that may apply for disclosing the Personal Data in this instance would be the “legitimate interests” ground. Article 6(1)(f) UK GDPR and EU GDPR. This ground, however, will only apply where the processing is necessary for the relevant purpose. Such processing will not be necessary where there is a less intrusive way of achieving that purpose. This ground will also not apply if, when balanced against each other, the rights and freedoms of the relevant individuals override the legitimate interest in question. The legal basis of “compliance with a legal obligation,” Article 6(1)(c) UK GDPR and EU GDPR,



would not be applicable in this situation because the legal obligation must exist under UK or EU law, which is not the case in the context of these chapter 11 cases.

16. In addition, processing (including disclosure) under the UK GDPR and EU GDPR must comply with certain key principles, including the principle of data minimization, which requires that any processing must be necessary in relation to its purpose. Disclosure of the unredacted names and home and e-mail addresses (or other Personal Data) of individual creditors on the public docket is not necessary for the purpose of reviewing the claim amounts of individual creditors in connection with a plan of reorganization or administering the chapter 11 cases, and the proposed redaction would be a less intrusive way of achieving this purpose. The right of individual creditors not to have their unredacted names and home and e-mail addresses disclosed on the public docket would also override the legitimate interest of disclosing such information to facilitate these chapter 11 cases. Disclosure in an unredacted form therefore risks breaching the UK GDPR and EU GDPR on account of (i) having no legal basis and (ii) breaching the minimization principle.

17. Violators of the UK GDPR and EU GDPR risk severe penalties. If an organization is found to have processed information in breach of the UK GDPR, the organization may be fined up to the higher of £17,500,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* United Kingdom Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019. Similarly, for a breach of the EU GDPR, the organization may be fined up to the higher of €20,000,000 or 4 percent of worldwide annual turnover—i.e., total annual revenues—of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5). The processing of information includes transferring or disclosing it to others. The UK GDPR and EU GDPR may apply to the Debtors, specifically, as certain of the Debtors



may be processing data relating to their creditors, including employees, customers, as well as their individual equity holders in the context of an establishment in the United Kingdom or in a member state of the European Economic Area, such as Debtor Cyxtera Netherlands B.V.

18. It is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these chapter 11 cases, including but not limited to the Consolidated Creditor Matrix and any schedules of assets and liabilities and statements of financial affairs (the “Schedules and Statements”) filed, (a) the home and e-mail addresses of individual creditors—including the Debtors’ employees and individual equity holders—who are citizens of the United States located in the United States and (b) the names, home and e-mail addresses, and other Personal Data of any natural person to the extent they are processed subject to the UK GDPR or EU GDPR because, respectively, (x) such personally identifiable information can be used to perpetrate identity theft and phishing scams or to locate survivors of domestic violence, harassment, or stalking under 11 U.S.C. § 107(c)(1), and (y) disclosure risks violating the UK GDPR and EU GDPR, exposing the Debtors to potential civil liability and significant financial penalties.

19. Redaction is necessary to protect personally identifiable information that would create “undue risk of identity theft or other unlawful injury to the individual or the individual’s property.” 11 U.S.C. § 107(c)(1). The risk related to section 107(c)(1) of the Bankruptcy Code is real and not merely speculative. In at least one chapter 11 case in Delaware, the abusive former partner of a debtor’s employee used the publicly accessible creditor and employee information filed in the chapter 11 case to track the employee at her new address that had not been publicly available until then, forcing the employee to change addresses again.<sup>5</sup> More recently, in a chapter

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<sup>5</sup> The incident, which took place during the first Charming Charlie chapter 11 proceedings in 2017, is described in the “creditor matrix motion” filed in *Charming Charlie Holdings Inc.*, Case No. 19-11534 (CSS) (Bankr. D. Del.



11 case in the Southern District of New York, at least four phishing scams have been uncovered,<sup>6</sup> including two where scammers first posed as associates of debtor's counsel using fake email accounts purportedly from debtor's counsel and requested that individual creditors reply with their account and other personal information and another where scammers posed as the debtor's claims agent and requested the same information from individual creditors. These events also suggest that disclosure of individuals' identifying information would not satisfy a legitimate interest assessment and would not be compliant with the minimization principle under the UK GDPR and EU GDPR.

20. The Debtors propose to provide an unredacted version of the Creditor Matrix, Schedules and Statements, and any other filings redacted pursuant to the proposed order to (a) the Court, (b) the U.S. Trustee, (c) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases; (d) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group; and (e) upon request to the Debtors (email is sufficient) or the Court of any party in interest, reasonably related to these chapter 11 cases, that represents that the unredacted list will be utilized solely for giving notice in the chapter 11 cases, and otherwise maintained in confidence, and covenants not to transfer or otherwise provide such unredacted personally identifiable information to any person or entity not party to the request. In each case, this would be subject to a review of whether such disclosure, on a case-by-case basis, would violate any obligation under the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any other privacy or data protection law or regulation. In addition, the Debtors will distribute as applicable any notices that are received at the Debtors' corporate headquarters and are intended for a current employee. A

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Jul. 11, 2019), Docket No. 4.

<sup>6</sup> See *In re Celsius Network, LLC*, Case No. 22-10964 (MG), Docket Nos. 1527, 1904, 1992, 2082.



version containing the redacted home and email addresses of individual creditors will be filed with the Court and shall be available for viewing via KCC's website, <https://www.kccllc.net/cyxtera>.

21. Courts in this jurisdiction and within the Third Circuit have granted the relief requested herein in comparable chapter 11 cases. *See, e.g., In re Bed, Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bank. D.N.J. May 17, 2023) (authorizing the debtors to redact the home and email addresses of individuals listed on the creditor matrix, schedules and statements, and other documents filed with the court); *In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 19, 2023) (authorizing the debtors to redact (i) the home and email addresses of individuals and (ii) and the names, home and email addresses of customers and employees that are minors listed on the creditor matrix, schedules and statements, and other documents filed with the court); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 30, 2022) (interim order authorizing the debtors to redact the home and email addresses of individuals listed on the creditor matrix, schedules and statements, or other documents filed with the court); *In re Christopher & Banks Corp.*, No. 21-10269 (ABA) (Bankr. D.N.J. Jan. 15, 2021) (authorizing the debtors to redact the home addresses of individuals listed on the creditor matrix, schedules and statements, and other documents filed with the court); *In re SLT Holdco, Inc.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 30, 2020) (same); *In re AmeriMark Interactive, LLC*, No. 23-10438 (TMH) (Bankr. D. Del. Apr. 13, 2023) (same); *In re Boxed, Inc.*, No. 23-10397 (BLS) (Bankr. D. Del. Apr. 6, 2023) (authorizing the debtors to redact the home and email addresses of individuals listed on the creditor matrix, schedules and statements, and other documents filed with the court); *In re FTX Trading Ltd.*, No. 22-11068 (JTD) (Bankr. D. Del. Jan. 20, 2023) (authorizing the debtors to redact the names, addresses, and email addresses of their customers from any documents filed with the court



or made publicly available in the debtors' chapter 11 cases for 90 days from the entry of the final order).<sup>7</sup>

22. In addition to granting the requested relief, bankruptcy courts in other districts within the Third Circuit have expounded on the importance of authorizing debtors to redact individual creditors' personally identifiable information, including home addresses in particular. In *Art Van Furniture*, in overruling the objection of the U.S. Trustee to the same redaction relief proposed here, Chief Judge Sontchi noted that the proposed redaction is not a "burden of proof" issue so "much as a common sense issue." Hr'g Tr. at 25:6–7, *In re Art Van Furniture, LLC*, No. 20-10533 (CSS) (Bankr. D. Del. Mar. 2020).<sup>8</sup> Judge Sontchi found that "at this point and given the risks associated with having any kind of private information out on the internet, [redaction] has really become routine [and] I think obvious relief." *Id.* at 25:13–16. Similarly, in *Forever 21*, in overruling the U.S. Trustee's objection, Judge Gross found that "[w]e live in a new age in which the theft of personal identification is a real risk, as is injury to persons who, for personal reasons,

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<sup>7</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

<sup>8</sup> Similarly, Judge Sontchi previously overruled the Delaware U.S. Trustee's objection to the redaction of individuals' information and found that "it's just plain common sense in 2019—soon-to-be 2020—to put as little information out as possible about people's personal lives to present [sic] scams . . . [Identity theft] is a real-life issue, and, of course, the issue of domestic violence is extremely important." Hr'g Tr. at 48:20–22, 49:3–5, *In re Anna Holdings*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019).

Notably, Judge Sontchi acknowledged that "the world is very different from [the 1980s] when you and I started practice with the problems of identity theft" and that his perspective had evolved in that he was not previously aware of "the dangers with this kind of information becoming public." *See* Hr'g Tr. at 45:25–46:2, 47:22–24. The Debtors reserve the right to supplement the record with respect to such risks insofar as they are not self-evident in this instance.



seek to have their addresses withheld.” Hr’g Tr. at 60:22–25, *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019).

23. For these reasons, the Debtors respectfully submit that cause exists to authorize the Debtors to redact, pursuant to 11 U.S.C. § 107(c)(1), the home and email addresses of individuals (and, where such information has been provided to, and is being processed by, an organization with an establishment located in the United Kingdom or a member state of the European Economic Area, the names, home addresses and other Personal Data of any individual) listed on the Consolidated Creditor Matrix, Schedules and Statements, or any other document filed with the Court. Absent such relief, the Debtors (a) may be in violation of applicable data privacy law, thereby exposing them to severe monetary penalties that could threaten the value of the Debtors’ estate during this sensitive stage of their restructuring, (b) would unnecessarily render individuals more susceptible to identity theft and phishing scams, and (c) could jeopardize the safety of employees, contract workers, and other individual creditors or individual equity holders who, unbeknownst to the Debtors, are survivors of domestic violence, harassment, or stalking by publishing their home and email addresses without any advance notice or opportunity to opt out or take protective measures.

**III. Under the Circumstances of These Chapter 11 Cases, it is Appropriate for This Court to Waive the Requirement to File a List of Equity Holders and to Provide Notice Directly to Equity Security Holders.**

24. Bankruptcy Rule 1007(a)(3) requires a debtor to file, within 14 days after the petition date, a list of the debtors’ equity security holders. Fed. R. Bankr. P. 1007(a)(3). Bankruptcy Rule 2002(d) requires that equity security holders be provided notice of, among other things, the commencement of the bankruptcy case and the confirmation hearing. Fed. R. Bankr. P. 2002(d). Bankruptcy courts have authority to modify or waive the requirements under both rules. Fed. R. Bankr. P. 1007(a)(3) (“[U]nless the court orders otherwise, the debtor



shall file . . . a list of the debtor's equity security holders . . . ."); Fed. R. Bankr. P. 2002(d) ("[U]nless otherwise ordered by the court, the clerk . . . shall in the manner and form directed by the court . . . give notice to all equity security holders . . . ."); *see also* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); Fed. R. Bankr. P. 9007 ("When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.").

25. The requirements to file a list of, and to provide notice directly to, equity security holders should be waived as to Debtor Cyxtera Technologies, Inc. ("Cyxtera Technologies"). Cyxtera Technologies' common stock is publicly traded on the NASDAQ, with approximately 180 million outstanding shares of common stock as of the Petition Date and cannot be readily traced to specific individual holders. Cyxtera Technologies only maintains a list of its registered equity security holders (an "Equity List") and therefore must obtain the names and addresses of its beneficial shareholders from a securities agent. Preparing and submitting such a list with last known addresses for each equity security holder and sending notices to all such parties will create undue expense and administrative burden with limited corresponding benefit to the estates or parties in interest.

26. Cyxtera Technologies. has taken several actions to inform its equity security holders of the commencement of these chapter 11 cases. On or about the date hereof, the Debtors will issue a press release announcing the filing. Cyxtera Technologies also filed with its petition a list of persons and entities with significant holdings of its outstanding common stock. As soon as is practicable following the date hereof, the Debtors intend to cause the notices required under Bankruptcy Rule 2002(d) to be served on registered holders of Debtor Cyxtera Technologies,



Inc.'s common stock. The Debtors request that the requirements to file a list of and to provide notice directly to Debtor Cyxtera Technologies, Inc.'s equity security holders (other than registered holders of Debtor Cyxtera Technologies, Inc.'s common stock) be waived.

27. Bankruptcy courts have granted substantially similar relief in other complex cases. *See, e.g., In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 30, 2022) (waiving the requirements to file a list of and to provide notice of commencement of the case to equity security holders); *In re PhaseBio Pharms., Inc.*, No. 22-10995 (LSS) (Bankr. D. Del. Nov. 15, 2022) (same); *In re NewAge Inc.*, No. 22-10819 (LSS) (Bankr. D. Del. Sept. 29, 2022) (same); *In re Allena Pharms., Inc.*, No. 22-10842 (KBO) (Bankr. D. Del. Sept. 26, 2022) (same); *In re Clarus Therapeutics Holdings, Inc.*, No. 22-10845 (MFW) (Bankr. D. Del. Sept. 7, 2022) (same).

#### **Waiver of Memorandum of Law**

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

#### **No Prior Request**

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

#### **Notice**

30. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the



attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 5, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**INTERIM 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.**



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim 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, (c) scheduling a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider approval of the Motion on a final basis, 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,

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



(Page | 4)

Debtors:	CYXTERA TECHNOLOGIES, INC., <i>et al.</i>
Case No.	23-14853 (JKS)
Caption of Order:	Interim 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

---

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 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   , **2023 at            (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   , **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, 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



(Page | 5)

Debtors:	CYXTERA TECHNOLOGIES, INC., <i>et al.</i>
Case No.	23-14853 (JKS)
Caption of Order:	Interim 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

---

of the Bankruptcy Code, each applicable Debtor shall file its own creditor mailing matrix within fourteen (14) days of any such conversion.

4. The Debtors are authorized, on an interim basis, to submit a single consolidated list of their thirty (30) largest unsecured creditors in lieu of a separate list for each Debtor.

5. The Debtors are authorized, on an interim 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 Interim 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' Proposed Claims and Noticing Agent. The Debtors shall



(Page | 6)

Debtors:	CYXTERA TECHNOLOGIES, INC., <i>et al.</i>
Case No.	23-14853 (JKS)
Caption of Order:	Interim 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

---

inform the U.S. Trustee promptly after denying any request for an unredacted document pursuant to this Interim Order. Nothing herein precludes a party in interest's right to file a motion requesting that the Court unseal the information redacted by this Interim Order. The Debtors shall file a redacted 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 an interim 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 Interim Order in accordance with the Motion.



(Page | 7)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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.

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. The Debtors shall serve by regular mail or email a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Order.

14. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

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



**Exhibit B**

**Proposed Final Order**



<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<b>Caption in Compliance with D.N.J. LBR 9004-1(b)</b>	
<b>KIRKLAND &amp; ELLIS LLP KIRKLAND &amp; ELLIS INTERNATIONAL LLP</b> Edward O. Sassower, P.C. ( <i>pro hac vice</i> pending) Christopher Marcus, P.C. ( <i>pro hac vice</i> pending) Derek I. Hunter ( <i>pro hac vice</i> pending) 601 Lexington Avenue New York, New York 10022 Telephone: (212) 446-4800 Facsimile: (212) 446-4900 edward.sassower@kirkland.com christopher.marcus@kirkland.com derek.hunter@kirkland.com  <b>COLE SCHOTZ P.C.</b> Michael D. Sirota, Esq. Warren A. Usatine, Esq. Felice R. Yudkin, Esq. Court Plaza North, 25 Main Street Hackensack, New Jersey 07601 Telephone: (201) 489-3000 msirota@coleschotz.com wusatine@coleschotz.com fyudkin@coleschotz.com  <i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re:  CYXTERA TECHNOLOGIES, INC., <i>et al</i>  Debtors. <sup>1</sup>	Chapter 11  Case No. 23-14853 (JKS)  (Joint Administration Requested)

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<sup>1</sup> 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.



**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.**



(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"),<sup>2</sup> 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

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



(Page | 4)

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

---

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.



(Page | 5)

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

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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) to KCC, the Debtors' Proposed 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



(Page | 6)

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

---

file a redacted 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 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.



(Page | 7)

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.



This is **Exhibit "W"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York

  
SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



**KIRKLAND & ELLIS 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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION SEEKING ENTRY OF  
AN ORDER EXTENDING TIME TO (I) FILE  
SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES  
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND**

<sup>1</sup> 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.





**STATEMENTS OF FINANCIAL AFFAIRS AND (II) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) extending the deadline by which the Debtors must file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “Schedules and Statements”) by twenty-two days, for a total of thirty-six days from the Petition Date (as defined herein), to and including July 10, 2023 without prejudice to the Debtors’ ability to request additional extensions for cause shown; and (b) granting related relief.

**Jurisdiction and Venue**

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

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



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

4. The bases for the relief requested herein are sections 105(a) and 521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 1007(c) and 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.



No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

**Basis for Relief**

7. The requirements of section 521 of the Bankruptcy Code and Bankruptcy Rule 1007(c) normally require debtors to file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs within fourteen days of the petition date. However, pursuant to Bankruptcy Rules 1007(c) and 9006(b), the Court has authority to extend the time required for the filing of the Schedules and Statements “for cause shown.” Fed. R. Bankr. P. 1007(c) and 9006(b). Showing “cause” merely requires that a debtor “demonstrate some justification for the issuance of the order” and bankruptcy courts will normally grant such extensions “in the absence of bad faith or prejudice to the adverse party.” *See, e.g., Bryant v. Smith*, 165 B.R. 176, 182 (W.D. Va. 1994) (discussing the standard for granting extensions under Bankruptcy Rule 1007) (internal citations and quotation marks omitted).

8. The Debtors submit that good and sufficient cause exists for granting an extension of time to file the Schedules and Statements. The ordinary operation of the Debtors’ businesses requires the Debtors to maintain voluminous books, records, and complex accounting systems. To prepare the Schedules and Statements, the Debtors must compile information from those books and records, and from documents relating to the claims of their thousands of creditors, and the Debtors’ many assets and contracts. This information is extensive and located in numerous places throughout the Debtors’ organization. Collecting the necessary information requires an enormous expenditure of time and effort on the part of the Debtors, their employees, and their professional advisors in the near term.

9. The Debtors, with the assistance of their professional advisors, are mobilizing their employees to work diligently and expeditiously on preparing the Schedules and Statements, but



resources are strained. Given the amount of work entailed in completing the Schedules and Statements and the competing demands on the Debtors' employees and professionals to assist with stabilizing business operations during the initial postpetition period, and the critical matters that the Debtors' management and professionals were required to address prior to the commencement of these chapter 11 cases, the Debtors likely will not be able to properly and accurately complete the Schedules and Statements within the required time period.

10. Prior to the Petition Date, the Debtors focused on preparing for the chapter 11 filing, preparing the business to transition into chapter 11, and negotiating with their significant creditor constituencies for a soft landing in chapter 11. Although the Debtors have commenced the process that will enable them to prepare and finalize what will be voluminous Schedules and Statements, and are working diligently to move the process forward, the Debtors anticipate that they may require up to twenty-two additional days to complete the Schedules and Statements. The Debtors submit that the extensive amount of information that must be assembled and compiled, the multiple places where the information is located, and the hundreds of employee and professional hours required to complete the Schedules and Statements constitute good and sufficient cause for granting the requested extension of time. No party in interest will be prejudiced by the extension requested herein because the Debtors have financial and operational incentives to progress these chapter 11 cases as expeditiously as possible. The Debtors therefore request that the Court extend the fourteen day period for an additional twenty-two days, without prejudice to the Debtors' right to request further extensions for cause shown.

11. Courts in this district have granted similar relief to that requested herein in a number of cases. *See, e.g., In re Bed Bath & Beyond*, No. 23-13359 (VFP) (Bank. D.N.J. Apr. 25, 2023) (granting debtors a total of 37 days from the petition date to file their schedules and statements);



*In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023) (granting debtors a total of 35 days from the petition date to file their schedules and statements); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 29, 2022) (granting debtors a total of 44 days from the petition date to file their schedules and statements); *In re Nat'l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. June 9, 2022) (same); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. July 15, 2020) (granting debtors a total of 30 days from the petition date to file their schedules and statements); and *In re Modell's Sporting Goods, Inc.*, No. 20-14179 (VFP) (Bankr. D.N.J. Mar. 13, 2020) (granting debtors a total of 35 days from the petition date to file their schedules and statements).<sup>3</sup>

### **Waiver of Memorandum of Law**

12. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to rule 9013-1(a)(3) of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules") because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

### **Reservation of Rights**

13. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d)

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<sup>3</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.



an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

**No Prior Request**

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

**Notice**

15. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and



counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank.]*



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

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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



**ORDER EXTENDING TIME  
TO (I) FILE SCHEDULES OF  
ASSETS AND LIABILITIES, SCHEDULES OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND  
STATEMENTS OF FINANCIAL AFFAIRS AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through five (5), is  
**ORDERED.**



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Order Extending Time to (I) File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief

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Upon the *Debtors' Motion Seeking Entry of an Order Extending Time to (I) File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs and (II) Granting Related Relief* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) extending the deadline by which the Debtors must file their Schedules and Statements by twenty-two days, for a total of thirty-six days from the Petition Date, to and including July 10, 2023 without prejudice to the Debtors' ability to request additional extensions for cause shown; 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 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

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<sup>2</sup> 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: Order Extending Time to (I) File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief

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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. Pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rules 1007(c) and 9006(b), the time by which the Debtors shall file the Schedules and Statements is extended by an additional twenty-two days beyond the fourteen-day extension provided for pursuant to Bankruptcy Rule 1007(c) to and including July 10, 2023.
3. Such extensions are without prejudice to the Debtors' right to file a motion with this Court seeking a further extension upon a showing of cause.
4. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
5. Nothing contained in this Order or any actions taken pursuant to this Order is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code;



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Order Extending Time to (I) File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief

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(f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

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

7. 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.

8. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

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



This is **Exhibit "X"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



---

A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) APPROVING NOTIFICATION AND HEARING PROCEDURES FOR  
CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> 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.





TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”): (a) approving certain notification and hearing procedures, substantially in the form of Exhibit 1 attached to the Interim Order (the “Procedures”), related to certain transfers of, or declarations of worthlessness with respect to, Debtor Cyxtera Technologies, Inc.’s existing classes (or series) of common stock or any Beneficial Ownership<sup>3</sup> therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”); (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock in violation of the Procedures shall be null and void *ab initio*; and (c) granting related relief. In addition, the Debtors request that the

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.

<sup>3</sup> “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the U.S. Department of the Treasury regulations thereunder (“Treasury Regulations”) (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

### **Jurisdiction and Venue**

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

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

4. The bases for the relief requested herein are sections 105, 362, and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) retail colocation—the practice of renting space and power to customers to deploy their technology infrastructure including servers, storage, and security devices in an extremely resilient and highly connected environment; (ii) interconnection services—the practice of connecting information technology equipment to a customer’s network service providers; and (iii) digital exchange services—the practice of offering customers additional resources including the ability to rent Cyxtera-owned servers or the ability to access partner-delivered products and software to help customers holistically manage their hybrid technology systems. Cyxtera offers this advanced suite of services to more than 2,000 customers.



Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees worldwide and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

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

#### **The Tax Attributes**

7. Companies generate Tax Attributes (as defined herein) through the course of their operations. Generally, a company generates net operating losses (“NOLs”) if the operating expenses it has incurred exceed the revenues it has earned during a single tax year. A company may apply, or “carry forward,”<sup>4</sup> NOLs to reduce future tax payments (subject to certain conditions discussed below). *See* IRC § 172. While NOLs are the most ubiquitous tax attributes, companies can also generate a variety of other tax attributes, including foreign tax business, business tax credits, and capital loss carryforwards, as the case may be. The “tax basis” in a company’s assets can be vital to determining a company’s tax attributes. Generally, a company’s deduction for net business interest expense is limited to 30 percent of its adjusted taxable income plus certain other

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<sup>4</sup> Under certain circumstances, certain NOLs generated may be “carried back” to offset taxable income in prior years. Generally, the specific rules regarding carrybacks and carryforwards generally depend on when a particular NOL was generated.



amounts. *See* IRC § 163. Any business interest expense disallowed is carried forward and treated as business interest expense in the following tax year (“163(j) Carryforwards”). *Id.* Other Tax Attributes have other sources.

8. As set forth below, a company’s Tax Attributes can become subject to significant limitation under sections 382 and 383 of the IRC if an “ownership change” occurs. The purpose of the relief requested herein is to minimize the risk that an “ownership change” occurs before the conclusion of these restructuring cases. In doing so, the Debtors intend to maximize the value of their estates by limiting tax liabilities generated during or as a result of the actions taken during the cases.

9. The Debtors currently estimate that, as of December 31, 2022, they had approximately \$300.8 million of federal NOLs, approximately \$232 million of 163(j) Carryforwards, and certain other tax attributes (collectively, the “Tax Attributes”).<sup>5</sup> The Debtors may generate additional Tax Attributes in the current tax year, including during the pendency of these chapter 11 cases. The Tax Attributes are potentially of significant value to the Debtors and their estates because the Tax Attributes may offset future federal taxable income or federal tax liability in future years. In addition, the Debtors may utilize such Tax Attributes to offset any taxable income generated by transactions consummated during these chapter 11 cases. Accordingly, the value of the Tax Attributes will inure to the benefit of all of the Debtors’ stakeholders.

10. As of the Petition Date, approximately 75 percent of Cyxtera Technologies, Inc.’s equity interests are held by Cyxtera Technologies, Inc.’s top five equity holders, with the vast

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<sup>5</sup> Amounts are estimates and are subject to change.



majority of the remainder held by various institutional investors. A limited number of the Debtors' current and former employees hold equity interests as well.

11. The relief requested herein is expected to preserve the value of the Tax Attributes to the benefit of the Debtors' stakeholders. Conversely, a premature limitation of the Debtors' Tax Attributes could cause substantial deterioration of value and significantly reduce recoveries to the Debtors' stakeholders. Failure to obtain the relief sought in this Motion could, therefore, greatly increase the risk that the Debtors would be unable to maximize the value of their estates.

**I. An "Ownership Change" May Negatively Affect the Debtors' Utilization of the Tax Attributes.**

12. Sections 382 and 383 of the IRC limit the amount of federal taxable income and federal tax liability, respectively, that can be offset by a corporation's tax attributes in taxable years (or portions thereof) following an "ownership change." Generally, an "ownership change" occurs if the percentage (by value) of the stock of a corporation owned by one or more "5-percent shareholders"<sup>6</sup> has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the 3-year testing period ending on the date of the ownership change. *See* IRC §§ 382(g), 382(i). The total percentage point increases of stock owned by one or more "5-percent shareholders" within the measuring period is generally referred to as the amount of the "ownership shift." In situations involving multiple classes of stock with different rights, the determination of whether a shareholder is a "5-percent shareholder" is made by reference to stock value (without regard to certain considerations such as control premiums or minority discounts, and with reference to certain mechanical tests). For example, an ownership change would occur in the following situation:

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<sup>6</sup> A "5-percent shareholder" is any person or entity (or group of people that is treated as a single entity under the applicable rules) with Beneficial Ownership of 5 percent or more of a corporation's stock at any time during the 3-year testing period ending on the date of the ownership change. IRC § 382(k)(7).



An individual (“A”) owns 50.1 percent of the stock of corporation XYZ. A sells her 50.1 percent interest to another individual (“B”), who owns 5 percent of XYZ’s stock. Under section 382 of the IRC, an ownership change has occurred because B’s interest in XYZ has increased by more than 50 percentage points (from 5 percent to 55.1 percent) during the testing period. The same result would follow even if B owned no XYZ stock prior to the transaction with A because B both becomes a “5-percent shareholder” and increases his ownership by more than 50 percentage points during the testing period.

13. It is critical to understand that, under these rules, a company can be harmed as a result of actions by parties that are unknown to the company. As noted above, if a person unknown to the company were to acquire more than 5 percent of the company’s stock (determined in accordance with the rules set forth above), the company would experience an “ownership shift” (or an increase in the magnitude of an “ownership shift”) that could lead to an ownership change. By the time the company could identify such unknown shareholder, such shareholder would have already purchased the shares and the harm would be done. Accordingly, for the Procedures to be effective, the Procedures must bind unknown parties.

14. As one particularly salient example, companies in certain instances may enact charter restrictions to protect their tax attributes. Such charter restrictions may impose *substantive* limitations on sales and purchases of equity that are similar to the procedural limitations requested in this Motion. Although such charter restrictions are put to a shareholder vote before being enacted, they always bind unknown parties (*i.e.*, persons that are not shareholders at the time the vote is taken) and do so via public information issued by the company in connection with the adoption of such charter restrictions. It is true that the relief requested in this Motion is not being put to a shareholder vote—nor should it be, because the requested relief is intended to maximize the value of the Debtors for all stakeholders—but unlike charter restrictions, the relief requested in this Motion merely implements *procedures* that must be observed before relevant actions are taken.



15. An “ownership change” can also occur as a result of a “worthless stock deduction” claimed by any “50-percent shareholder.” IRC § 382(g)(4)(D). A “50-percent shareholder” is any person or entity (or group of people that is treated as a single entity under the applicable rules) with Beneficial Ownership of 50 percent or more of a corporation’s stock “at any time during the 3-year period ending on the last day of the taxable year” with respect to which the worthless stock deduction is claimed. *Id.* If the “50-percent shareholder” still owns the corporation’s stock at the end of the taxable year, sections 382 and 383 of the IRC essentially treat such person or entity as newly purchasing the stock on the first day of the next taxable year. For example, if a person or entity with 50 percent of a corporation’s stock claims a worthless stock deduction with respect to the 2022 tax year but does not sell such stock in 2022, that person is treated: (a) as not having owned the stock at the end of 2022; and (b) as having purchased the stock on the first day of the 2023 tax year. Such deemed purchase would cause an ownership change because the “50-percent shareholder” would be deemed to have a 50-percentage-point increase in its stock ownership. Notably, while the seminal case of *Official Committee of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines Inc.)*, 928 F.2d 565 (2d Cir. 1991) is generally relied upon to support equity trading motions in general, the specific issue in *Prudential Lines* was, in fact, a worthless stock deduction.

16. If an ownership change occurs, section 382 of the IRC limits the amount of a corporation’s future taxable income that may be offset by its “pre-change losses” and section 383 of the IRC limits the amount of a corporation’s future tax liability that may be offset by its “excess credits,” in each case, to an annual amount based on the fair market value of all of the stock of the corporation prior to the ownership change multiplied by the long-term tax exempt



rate that applies to the month of the ownership change.<sup>7</sup> See IRC §§ 382(b) and 383(a). Pre-change losses and excess credits include the Debtors' Tax Attributes and any so-called "realized built-in losses" (as defined in section 382(h)(3) of the IRC).<sup>8</sup> Once a Tax Attribute is limited under section 382 or 383 of the IRC, its use may be limited forever.<sup>9</sup> Thus, certain transfers or worthless stock deductions with respect to the Beneficial Ownership of Common Stock effected before the effective date of the Debtors' emergence from chapter 11 protection may trigger an "ownership change" for IRC purposes, severely endangering the Debtors' ability to utilize the Tax Attributes, which would cause substantial damage to the Debtors' estates.

17. Notably, the Debtors have limited the relief requested herein to the extent necessary to preserve estate value. Specifically, the proposed Interim Order and Final Order will affect only: (a) holders of the equivalent of more than 8,114,325 shares of Common Stock (*i.e.*, 4.5 percent or more of outstanding Common Stock)<sup>10</sup>; (b) parties who are interested in purchasing sufficient Common Stock to result in such party becoming a holder of 4.5 percent or more of Beneficial Ownership of any class (or series) of outstanding Common Stock; and (c) any "50-percent shareholder" seeking to claim a worthless stock deduction.

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<sup>7</sup> The applicable long-term tax-exempt rate changes from month to month. For ownership changes occurring in May 2023, the applicable long-term tax-exempt rate is 3.04% percent.

<sup>8</sup> The rules relating to potential limitations on the ability to offset taxable income with so-called "realized built-in losses" are highly complex and depend on, among other things, the extent (if any) of a debtor's "net unrealized built-in loss" at the time the ownership change occurs. A "net unrealized built-in loss" is equal to the excess of the aggregate adjusted basis of all of a corporation's applicable assets over their fair market value (as determined for purposes of section 382 of the IRC) immediately prior to the ownership change. IRC § 382(h)(3)(A)(i). Once a "net unrealized built-in loss" is limited under section 382 or 383 of the IRC, its use is limited for 5 years.

<sup>9</sup> Realized built-in losses that are deducted beginning after the expiration of a five-year "recognition period" are no longer subject to limitation, but any realized built-in losses that are deducted prior to the expiration of such period are limited forever.

<sup>10</sup> Based on approximately 180,318,318 shares of Common Stock outstanding as of the Petition Date.



18. To maximize the use of the Tax Attributes and enhance recoveries for the Debtors' stakeholders, the Debtors seek limited relief that will enable them to closely monitor certain transfers of Beneficial Ownership of Common Stock and certain worthless stock deductions with respect to Beneficial Ownership of Common Stock so as to be in a position to act expeditiously to prevent such transfers or worthlessness deductions, if necessary, with the purpose of preserving the Tax Attributes. By establishing and implementing such Procedures, the Debtors will be in a position to object to "ownership changes" that threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

## **II. Proposed Procedures for Transfers of or Declarations of Worthlessness with Respect to Common Stock.**

19. The Procedures are the mechanism by which the Debtors propose that they will monitor and, if necessary, object to certain transfers of Beneficial Ownership of Common Stock and declarations of worthlessness with respect to Beneficial Ownership of Common Stock to ensure preservation of the Tax Attributes. The Procedures, which are fully set forth in Exhibit 1 to the Interim Order and the Final Order, are detailed below.<sup>11</sup>

### Procedures for Transfers of Common Stock

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) that is a Substantial Shareholder (as defined herein) must file with the Court, and serve upon: (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida, 33134, Attn: Victor Semah (victor.semah@cyxtera.com) and Hao Xu (hao.xu@cyxtera.com); (ii) proposed co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower (edward.sassower@kirkland.com), P.C., Christopher Marcus, P.C. (christopher.marcus@kirkland.com), and Derek I. Hunter (derek.hunter@kirkland.com), and (B) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn: Michael D. Sirota,

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<sup>11</sup> Capitalized terms used in this section but not otherwise defined herein have the meaning given to them in the Procedures. To the extent that this summary and the terms of the Procedures are inconsistent, the terms of the Procedures control.



Esq. (MSirota@coleschotz.com), Warren A. Usatine, Esq. (WUsatine@coleschotz.com), and Felice R. Yudkin, Esq. (FYudkin@coleschotz.com); (iii) counsel to any statutory committee appointed in these chapter 11 cases; (iv) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com) and Steven Domanowski (sdomanowski@gibsondunn.com); and (v) 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 (David.Gerardi@usdoj.gov) (collectively, the “Notice Parties”), a declaration of such status, substantially in the form attached to the Procedures as Exhibit 1A (each, a “Declaration of Status as a Substantial Shareholder”), on or before the later of (A) twenty (20) calendar days after the date of the Notice of Interim Order, or (B) ten (10) calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.

- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached to the Procedures as Exhibit 1B (each, a “Declaration of Intent to Accumulate Common Stock”).
- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached to the Procedures as Exhibit 1C (each, a “Declaration of Intent to Transfer Common Stock,” and together with a Declaration of Intent to Accumulate Common Stock, each, a “Declaration of Proposed Transfer”).
- d. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors or any of the other Notice Parties file an objection, such transaction will remain ineffective unless such



objection is withdrawn, or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional twenty-day waiting period for each Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the other Notice Parties.

- e. For purposes of these Procedures (including, for the avoidance of doubt, with respect to both transfers and declarations of worthlessness): (i) a “Substantial Shareholder” is any entity or individual person that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of section 382 of the IRC, and the Treasury Regulations promulgated thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

#### Procedures for Declarations of Worthlessness of Common Stock

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder<sup>12</sup> must file with the Court and serve upon the Notice Parties a declaration of such status, substantially in the form attached to the Procedures as Exhibit 1D (each, a “Declaration of Status as a 50-Percent Shareholder”), on

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<sup>12</sup> For purposes of the Procedures, a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2019, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).



or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order and (ii) ten (10) calendar days after becoming a 50-Percent Shareholder; provided that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.

- b. Prior to filing any federal or state tax return, or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a taxable year ending before the Debtors' emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction (a "Declaration of Intent to Claim a Worthless Stock Deduction"), substantially in the form attached to the Procedures as Exhibit 1E.
  - i. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors' ability to utilize their Tax Attributes.
  - ii. If the Debtors or the other Notice Parties timely object, the filing of the tax return or amendment thereto with such claim will not be permitted unless approved by a final and non-appealable order of the Court or such objection is withdrawn.
  - iii. If the Debtors and the other Notice Parties do not object within such twenty-day period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional twenty-day waiting period. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the other Notice Parties.

#### Notice Procedures

- a. No later than three (3) business days following entry of the Interim Order, the Debtors shall serve a notice by first class mail, substantially in the form attached to the Procedures as Exhibit 1F (the "Notice of Interim Order"), on: (i) the U.S. Trustee for the District of New Jersey; (ii) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group; (iii) the entities



listed on the consolidated list of creditors holding the thirty largest unsecured claims; (iv) the U.S. Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) any official committees appointed in these chapter 11 cases; (vii) to the extent known, all registered and nominee holders of Common Stock (with instructions to serve down to the beneficial holders of Common Stock). Additionally, no later than three (3) business days following entry of the Final Order, the Debtors shall serve a Notice of Interim Order modified to reflect that the Final Order has been entered (as modified, the “Notice of Final Order”) on the same entities that received the Notice of Interim Order.

- b. All registered and nominee holders of Common Stock shall be required to serve the Notice of Interim Order or Notice of Final Order, as applicable, on any holder for whose benefit such registered or nominee holder holds such Common Stock, down the chain of ownership for all such holders of Common Stock.
- c. Any entity or individual, or broker or agent acting on such entity’s or individual’s behalf who sells Common Stock to another entity or individual, shall be required to serve a copy of the Notice of Interim Order or Notice of Final Order, as applicable, on such purchaser of such Common Stock, or any broker or agent acting on such purchaser’s behalf.
- d. To the extent confidential information is required in any declaration described in the Procedures, such confidential information may be filed and served in redacted form; *provided, however*, that any such declarations served on the Debtors ***shall not*** be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except: (i) to the extent necessary to respond to a petition or objection filed with the Court; (ii) to the extent otherwise required by law; or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to an objection filed with the Court, such confidential information shall be filed under seal or in a redacted form.

#### **Basis for Relief Requested**

20. Section 541 of the Bankruptcy Code provides that property of the estate comprises, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541. The Tax Attributes are property of the Debtors’



estates. See *Official Comm. of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines Inc.)*, 928 F.2d 565, 573 (2d Cir. 1991) (“We hold that the right to a carryforward attributable to its . . . NOL was property of [the debtor’s] bankruptcy estate.”); *Official Comm. of Unsecured Creditors v. Forman (In re Forman Enters., Inc.)*, 273 B.R. 408, 416 (Bankr. W.D. Pa. 2002) (finding that NOLs are property of the debtors’ estates); *Nisselson v. Drew Indus., Inc. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) (same). Section 362(a)(3) of the Bankruptcy Code, moreover, stays “any act [of an entity] to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Accordingly, any act of a holder of a debtor’s equity securities that causes the termination, or limits use, of the Tax Attributes violates the automatic stay. See, e.g., *In re Prudential Lines*, 928 F.2d at 574 (holding that causing the termination of or adversely affecting the value of a debtor’s NOL violates the automatic stay); *In re Phar-Mor, Inc.*, 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993) (“[T]he sale of stock is prohibited by § 362(a)(3) as an exercise of control over the NOL, which is property of the estate.”).

21. Implementation of the Procedures is necessary and appropriate to enforce the automatic stay and, critically, to preserve the value of the Tax Attributes for the benefit of the Debtors’ estates. Under sections 382 and 383 of the IRC, certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock prior to the consummation of a chapter 11 plan could eliminate, or limit the use, of the Tax Attributes. As stated above, the Debtors estimate that as of December 31, 2022, they had approximately \$300.8 million of federal NOLs, approximately \$232 million of 163(j) Carryforwards, and certain other tax attributes. In addition, the Debtors may generate additional Tax Attributes in the current tax year. These Tax Attributes may be necessary to address tax consequences resulting from the implementation of a



chapter 11 plan and, depending upon the structure utilized to consummate a chapter 11 plan, they may provide the potential for material future tax savings (including in post-emergence years) or other potential tax structuring opportunities in these chapter 11 cases. The elimination or limitation of the Tax Attributes could, therefore, be materially detrimental to all parties in interest, including by potentially limiting the Debtors' ability to utilize certain structures to consummate a chapter 11 plan. Granting the relief requested herein will preserve the Debtors' flexibility in operating their businesses during the pendency of these chapter 11 cases and implementing an exit plan that makes full and efficient use of the Tax Attributes and maximizes the value of the Debtors' estates.

22. Additionally, the Procedures do not bar all transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock. The Debtors seek to establish procedures only to monitor those types of transactions that would pose a serious risk under the ownership change test pursuant to sections 382 and 383 of the IRC and to preserve the Debtors' ability to seek substantive relief if it appears that a proposed transfer or declaration of worthlessness could jeopardize the Debtors' utilization of the Tax Attributes. Because of the Tax Attributes' importance to the Debtors' restructuring, and thus all parties in interest, the benefits of implementing the Procedures outweigh the drawbacks of subjecting a small subset of transfers to the Procedures.

23. Courts in this district and elsewhere routinely approve relief similar to that requested herein. *See, e.g., In re Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 31, 2023) (approving certain notification and hearing procedures with respect to certain transfers of equity interests); *In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (approving certain notification and hearing procedures related to certain transfers of and declarations of worthlessness with respect to certain equity interests); *In re BlockFi, Inc.*, No. 22-



19361 (MBK) (Bankr. D.N.J. Nov. 29, 2022) (same); *In re SIO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2023) (same); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sept. 22, 2022) (same).<sup>13</sup>

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

24. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. Preservation of the Debtors’ Tax Attributes and equity distribution is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Waiver of Memorandum of Law**

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

**Reservation of Rights**

26. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity

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<sup>13</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.



of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

**No Prior Request**

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

**Notice**

28. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the



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

*[Remainder of page intentionally left blank.]*



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**INTERIM ORDER (I) APPROVING  
NOTIFICATION AND HEARING PROCEDURES FOR  
CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief

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Upon the Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim Order") (a) approving the Procedures related to transfers of Beneficial Ownership of, and declarations of worthlessness with respect to, Common Stock, (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*, (c) scheduling a final hearing to consider approval of the Motion on a final basis, 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 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

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<sup>2</sup> 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: Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief

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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 \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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 Procedures, as set forth in **Exhibit 1** attached hereto, are hereby approved; *provided, however*, that any party in interest may file a motion and seek emergency relief from the Procedures based upon a showing of sufficient cause; *provided* that the Debtors' and the other Notice Parties' rights to oppose such relief are fully reserved and preserved.
4. Any transfer of or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.
5. In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors, which may include the actions specified in Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer is null and void *ab initio*.



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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief

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6. In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

7. The Debtors, with the consent of the Ad Hoc First Lien Group (which shall not be unreasonably withheld, conditioned, or delayed) and in writing, may, retroactively or prospectively, waive any and all restrictions, stays, and notification procedures set forth in the Procedures.

8. The Debtors shall post the Procedures to the website established by the Debtors' Claims and Noticing Agent for these chapter 11 cases (<https://www.kccllc.net/cyxtera>), such notice being reasonably calculated to provide notice to all parties that may be affected by the Procedures, whether known or unknown.

9. To the extent that this Interim Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Interim Order shall govern.

10. The requirements set forth in this Interim Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws and do not excuse compliance therewith.

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief

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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 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.

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief

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13. 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.

14. 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.

15. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within three (3) business days after the entry of this Interim Order, or as soon as reasonably practicable thereafter.

16. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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



**Exhibit 1**

**Procedures for Transfers of and Declarations of  
Worthlessness with Respect to Beneficial Ownership of Common Stock**



**PROCEDURES FOR TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO BENEFICIAL OWNERSHIP OF COMMON STOCK**

The following procedures apply to transfers of Common Stock:<sup>1</sup>

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) that is a Substantial Shareholder (as defined herein) must file with the Court, and serve upon: (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida, 33134, Attn: Victor Semah (victor.semah@cyxtera.com) and Hao Xu (hao.xu@cyxtera.com); (ii) proposed co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower, P.C. (edward.sassower@kirkland.com), Christopher Marcus, P.C. (christopher.marcus@kirkland.com), and Derek I. Hunter (derek.hunter@kirkland.com), and (B) 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 R. Yudkin, Esq. (FYudkin@coleschotz.com); (iii) counsel to any statutory committee appointed in these chapter 11 cases; (iv) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com) and Steven Domanowski (sdomanowski@gibsondunn.com); and (v) 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 (David.Gerardi@usdoj.gov) (collectively, the “Notice Parties”), a declaration of such status, substantially in the form attached to the Procedures as Exhibit 1A (each, a “Declaration of Status as a Substantial Shareholder”), on or before the later of (A) twenty (20) calendar days after the date of the Notice of Interim Order, or (B) ten (10) calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.
- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached to the Procedures as Exhibit 1B (each, a “Declaration of Intent to Accumulate Common Stock”).

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meaning given to them in the Motion.



- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached to the Procedures as **Exhibit 1C** (each, a “Declaration of Intent to Transfer Common Stock,” and together with a Declaration of Intent to Accumulate Common Stock, each, a “Declaration of Proposed Transfer”).
- d. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors or any of the other Notice Parties file an objection, such transaction will remain ineffective unless such objection is withdrawn, or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional twenty-day waiting period for each Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the other Notice Parties.
- e. For purposes of these Procedures (including, for the avoidance of doubt, with respect to both transfers and declarations of worthlessness): (i) a “Substantial Shareholder” is any entity or individual person that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of section 382 of the IRC, and the Treasury Regulations promulgated thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would



be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

The following procedures apply for declarations of worthlessness of Common Stock:

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder<sup>2</sup> must file with the Court and serve upon the Notice Parties a declaration of such status, substantially in the form attached to the Procedures as Exhibit 1D (each, a “Declaration of Status as a 50-Percent Shareholder”), on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order and (ii) ten (10) calendar days after becoming a 50-Percent Shareholder; provided that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.
- b. Prior to filing any federal or state tax return, or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a taxable year ending before the Debtors’ emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction (a “Declaration of Intent to Claim a Worthless Stock Deduction”), substantially in the form attached to the Procedures as Exhibit 1E.
  - i. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors’ ability to utilize their Tax Attributes.
  - ii. If the Debtors or the other Notice Parties timely object, the filing of the tax return or amendment thereto with such claim will not be permitted unless approved by a final and non-appealable order of the Court or such objection is withdrawn.

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<sup>2</sup> For purposes of the Procedures, a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2019, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).



- iii. If the Debtors and the other Notice Parties do not object within such twenty-day period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional twenty-day waiting period. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the other Notice Parties.

### **NOTICE PROCEDURES**

The following notice procedures apply to these Procedures:

- a. No later than three (3) business days following entry of the Interim Order, the Debtors shall serve a notice by first class mail, substantially in the form attached to the Procedures as Exhibit 1F (the “Notice of Interim Order”), on: (i) the U.S. Trustee for the District of New Jersey; (ii) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group; (iii) the entities listed on the consolidated list of creditors holding the thirty largest unsecured claims; (iv) the U.S. Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) any official committees appointed in these chapter 11 cases; and (vii) to the extent known, all registered and nominee holders of Common Stock (with instructions to serve down to the beneficial holders of Common Stock). Additionally, no later than three (3) business days following entry of the Final Order, the Debtors shall serve a Notice of Interim Order modified to reflect that the Final Order has been entered (as modified, the “Notice of Final Order”) on the same entities that received the Notice of Interim Order.
- b. All registered and nominee holders of Common Stock shall be required to serve the Notice of Interim Order or Notice of Final Order, as applicable, on any holder for whose benefit such registered or nominee holder holds such Common Stock, down the chain of ownership for all such holders of Common Stock.
- c. Any entity or individual, or broker or agent acting on such entity’s or individual’s behalf who sells Common Stock to another entity or individual, shall be required to serve a copy of the Notice of Interim Order or Notice of Final Order, as applicable, on such purchaser of such Common Stock or any broker or agent acting on such purchaser’s behalf.
- d. To the extent confidential information is required in any declaration described in the Procedures, such confidential information may be filed and served in redacted form; *provided, however*, that any such declarations



served on the Debtors ***shall not*** be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except: (i) to the extent necessary to respond to a petition or objection filed with the Court; (ii) to the extent otherwise required by law; or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to an objection filed with the Court, such confidential information shall be filed under seal or in a redacted form.



**Exhibit 1A**

**Declaration of Status as a Substantial Shareholder**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER<sup>2</sup>**

**PLEASE TAKE NOTICE** that the undersigned party is/has become a Substantial Shareholder with respect to the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, as of \_\_\_\_\_, 2023, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following

<sup>1</sup> 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.

<sup>2</sup> For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares of Common Stock	Date Acquired

(Attach additional page or pages if necessary)

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Interim Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Interim Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the Substantial Shareholder, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the Substantial Shareholder’s taxpayer identification number and the amount of Common Stock that the Substantial Shareholder beneficially owns.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Substantial Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, \_\_\_\_\_

(City)

(State)



**Exhibit 1B**

**Declaration of Intent to Accumulate Common Stock**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF INTENT TO ACCUMULATE COMMON STOCK**<sup>2</sup>

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the “Proposed Transfer”) one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2023, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Interim Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Interim Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors and the other Notice Parties have twenty calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors or any of the other Notice Parties file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring, or otherwise accumulating Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(City) (State)



**Exhibit 1C**

**Declaration of Intent to Transfer Common Stock**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF INTENT TO TRANSFER COMMON STOCK**<sup>2</sup>

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the “Proposed Transfer”) one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2023, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock after such transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Interim Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Interim Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors and the other Notice Parties have twenty calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors or any of the other Notice Parties file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading, or otherwise transferring Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(City) (State)



**Exhibit 1D**

**Declaration of Status as a 50-Percent Shareholder**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER**

PLEASE TAKE NOTICE that the undersigned party is/has become a 50-Percent Shareholder<sup>2</sup> with respect to one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2019, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, as of \_\_\_\_\_, 2023, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

<b>Number of Shares of Common Stock</b>	<b>Date Acquired</b>

(Attach additional page or pages if necessary)

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Interim Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Interim Order).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of 50-Percent Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, \_\_\_\_\_

(City)

(State)



**Exhibit 1E**

**Declaration of Intent to Claim a Worthless Stock Deduction**



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

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION**

**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “Worthless Stock Deduction”) with respect to one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2023, the undersigned party filed a Declaration of Status as a 50-Percent Shareholder with the Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

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



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Worthless Stock Deduction, the undersigned party proposes to declare that \_\_\_\_\_ shares of Common Stock became worthless during the tax year ending \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Interim Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Interim Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, the undersigned party acknowledges that the Debtors and the other Notice Parties have twenty calendar days after receipt of this Declaration to object to the Worthless Stock Deduction described herein. If the Debtors or any of the other Notice parties file an objection, such Worthless Stock Deduction will not be effective unless such objection is withdrawn or such action is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Worthless Stock Deduction may proceed solely as set forth in this Declaration.



**PLEASE TAKE FURTHER NOTICE** that any further claims of worthlessness contemplated by the undersigned party will each require an additional notice filed with the Court to be served in the same manner as this Declaration and are subject to an additional twenty-day waiting period.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, \_\_\_\_\_

(City)

(State)



**Exhibit 1F**

**Notice of Interim Order**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**NOTICE OF INTERIM ORDER (I) APPROVING  
NOTIFICATION AND HEARING PROCEDURES FOR  
CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

**TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF THE EXISTING CLASS (OR SERIES) OF COMMON STOCK (THE “COMMON STOCK”) OF CYXTERA TECHNOLOGIES, INC.:**

**PLEASE TAKE NOTICE** that on June 4, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed petitions with the United States Bankruptcy Court for the District of New Jersey (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors’ estates or to exercise control over property of or from the Debtors’ estates.

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Motion”).

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



**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], 2023, the Court entered the *Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Interim Order”) approving procedures for certain transfers of and declarations of worthlessness with respect to Common Stock set forth in **Exhibit 1** attached to the Interim Order (the “Procedures”).<sup>2</sup> The Procedures are available to view and download on the website established by the Debtors’ Claims and Noticing Agent for these chapter 11 cases <https://www.kccllc.net/cyxtera>.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, a Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock or Beneficial Ownership of Common Stock in violation of the Procedures, and any such transaction in violation of the Procedures shall be null and void *ab initio*.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, the Procedures shall apply to the holding and transfers of Common Stock or any Beneficial Ownership therein by a Substantial Shareholder or someone who may become a Substantial Shareholder.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Interim Order, a 50-Percent Shareholder may not claim a worthless stock deduction with respect to Common Stock or Beneficial Ownership of Common Stock in violation of the Procedures, and any such deduction in violation of the Procedures shall be null and void *ab initio*, and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning given to them in the Interim Order or the Motion, as applicable.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, upon the request of any entity, the proposed notice and claims agent for the Debtors, Kurtzman Carson Consultants LLC, will provide a copy of the Interim Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such declarations are also available via PACER on the Court's website at <https://ecf.deb.uscourts.gov/> for a fee, or free of charge by accessing the Debtors' restructuring website at <https://www.kccllc.net/cyxtera>.

**PLEASE TAKE FURTHER NOTICE** that the final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2023, at \_\_:\_\_.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2023, and shall be served on: (a) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida, 33134, Attn: Victor Semah and Hao Xu; (b) proposed co-counsel to the Debtors, (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower, P.C., Christopher Marcus, P.C., and Derek I. Hunter, and (ii) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn: Michael D. Sirota, Esq., Warren A. Usatine, Esq., and Felice Yudkin, Esq.; (c) counsel to the Ad Hoc Group of First Lien Lenders, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg and Steve Domanowski; (d) 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; and (e) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, the Court may enter such Final Order without need for the Final Hearing.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Interim Order, failure to follow the procedures set forth in the Interim Order shall constitute a violation of, among other things, the automatic stay provisions of section 362 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that nothing in the Interim Order shall preclude any person desirous of acquiring any Common Stock from requesting relief from the Interim Order from this Court, subject to the Debtors' and the other Notice Parties' rights to oppose such relief.

**PLEASE TAKE FURTHER NOTICE** that, other than to the extent that the Interim Order expressly conditions or restricts trading in Common Stock, nothing in the Interim Order or in the Motion shall, or shall be deemed to, prejudice, impair, or otherwise alter or affect the rights of any holders of Common Stock, including in connection with the treatment of any such stock under any chapter 11 plan or any applicable bankruptcy court order.

**PLEASE TAKE FURTHER NOTICE** that any prohibited purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock, Beneficial Ownership thereof, or option with respect thereto in violation of the Interim Order is prohibited and shall be null and void *ab initio* and may be subject to additional sanctions as this court may determine.

**PLEASE TAKE FURTHER NOTICE** that the requirements set forth in the Interim Order are in addition to the requirements of applicable law and do not excuse compliance therewith.



Dated: June 4, 2023

*/s/ Michael D. Sirota*

---

**COLE SCHOTZ P.C.**

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

Email: msirota@coleschotz.com  
wusatine@coleschotz.com  
fyudkin@coleschotz.com

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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

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

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

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: edward.sassower@kirkland.com  
christopher.marcus@kirkland.com  
derek.hunter@kirkland.com

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



**Exhibit B**

**Proposed Final Order**



<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<b>Caption in Compliance with D.N.J. LBR 9004-1(b)</b>	
<b>KIRKLAND &amp; ELLIS LLP KIRKLAND &amp; ELLIS INTERNATIONAL LLP</b> Edward O. Sassower, P.C. ( <i>pro hac vice</i> pending) Christopher Marcus, P.C. ( <i>pro hac vice</i> pending) Derek I. Hunter ( <i>pro hac vice</i> pending) 601 Lexington Avenue New York, New York 10022 Telephone: (212) 446-4800 Facsimile: (212) 446-4900 edward.sassower@kirkland.com christopher.marcus@kirkland.com derek.hunter@kirkland.com  <b>COLE SCHOTZ P.C.</b> Michael D. Sirota, Esq. Warren A. Usatine, Esq. Felice R. Yudkin, Esq. Court Plaza North, 25 Main Street Hackensack, New Jersey 07601 Telephone: (201) 489-3000 msirota@coleschotz.com wusatine@coleschotz.com fyudkin@coleschotz.com  <i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re:  CYXTERA TECHNOLOGIES, INC., <i>et al</i>  Debtors. <sup>1</sup>	Chapter 11  Case No. 23-14853 (JKS)  (Joint Administration Requested)

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<sup>1</sup> 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.



**FINAL ORDER (I) APPROVING  
NOTIFICATION AND HEARING PROCEDURES FOR  
CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through six (6), is  
**ORDERED.**



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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief

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Upon the *Debtors' Motion for Entry of Interim and Final Orders(I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) approving the Procedures related to transfers of Beneficial Ownership of, and declarations of worthlessness with respect to, Common Stock, (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*, 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 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

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<sup>2</sup> 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.*

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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 Procedures, as set forth in Exhibit 1 attached to this Final Order are hereby approved on a final basis.
3. Any transfer of or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.
4. In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors, which may include the actions specified in Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer is null and void *ab initio*.
5. In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.
6. The Debtors, with the consent of the Ad Hoc First Lien Group (which shall not be unreasonably withheld, conditioned, or delayed) and in writing, may, retroactively or



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prospectively, waive any and all restrictions, stays, and notification procedures set forth in the Procedures.

7. The Debtors shall post the Procedures to the website established by the Debtors' Claims and Noticing Agent for these chapter 11 cases (<https://www.kccllc.net/cyxtera>), such notice being reasonably calculated to provide notice to all parties that may be affected by the Procedures, whether known or unknown.

8. To the extent that this Final Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Final Order shall govern.

9. Nothing herein shall preclude any person from requesting relief from this Final Order from this Court, subject to the Debtors' rights to oppose such relief.

10. The requirements set forth in this Final Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws and do not excuse compliance therewith.

11. 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;



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(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.

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

14. 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.



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



**Exhibit 1**

**Procedures for Transfers of and Declarations  
of Worthlessness with Respect to Beneficial Ownership of Common Stock**



**PROCEDURES FOR TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO BENEFICIAL OWNERSHIP OF COMMON STOCK**

The following procedures apply to transfers of Common Stock:<sup>1</sup>

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) that is a Substantial Shareholder (as defined herein) must file with the Court, and serve upon: (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida, 33134, Attn: Victor Semah (victor.semah@cyxtera.com) and Hao Xu (hao.xu@cyxtera.com); (ii) proposed co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower, P.C. (edward.sassower@kirkland.com), Christopher Marcus, P.C. (christopher.marcus@kirkland.com), and Derek I. Hunter (derek.hunter@kirkland.com), and (B) 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 R. Yudkin, Esq. (FYudkin@coleschotz.com); (iii) counsel to any statutory committee appointed in these chapter 11 cases; (iv) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com) and Steven Domanowski (sdomanowski@gibsondunn.com); and (v) 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 (David.Gerardi@usdoj.gov) (collectively, the “Notice Parties”), a declaration of such status, substantially in the form attached to the Procedures as Exhibit 1A (each, a “Declaration of Status as a Substantial Shareholder”), on or before the later of (A) twenty (20) calendar days after the date of the Notice of Interim Order, or (B) ten (10) calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.
- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached to the Procedures as Exhibit 1B (each, a “Declaration of Intent to Accumulate Common Stock”).

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.



- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached to the Procedures as **Exhibit 1C** (each, a “Declaration of Intent to Transfer Common Stock,” and together with a Declaration of Intent to Accumulate Common Stock, each, a “Declaration of Proposed Transfer”).
- d. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock, described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors or any of the other Notice Parties file an objection, such transaction will remain ineffective unless such objection is withdrawn, or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional twenty-day waiting period for each Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the other Notice Parties.
- e. For purposes of these Procedures (including, for the avoidance of doubt, with respect to both transfers and declarations of worthlessness): (i) a “Substantial Shareholder” is any entity or individual person that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of section 382 of the IRC, and the Treasury Regulations promulgated thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would



be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

The following procedures apply for declarations of worthlessness of Common Stock:

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder<sup>2</sup> must file with the Court and serve upon the Notice Parties a declaration of such status, substantially in the form attached to the Procedures as Exhibit 1D (each, a “Declaration of Status as a 50-Percent Shareholder”), on or before the later of (i) twenty (20) calendar days after the date of the Notice of Interim Order and (ii) ten (10) calendar days after becoming a 50-Percent Shareholder; provided that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.
- b. Prior to filing any federal or state tax return, or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a taxable year ending before the Debtors’ emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction (a “Declaration of Intent to Claim a Worthless Stock Deduction”), substantially in the form attached to the Procedures as Exhibit 1E.
  - i. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors’ ability to utilize their Tax Attributes.
  - ii. If the Debtors or the other Notice Parties timely object, the filing of the tax return or amendment thereto with such claim will not be permitted unless approved by a final and non-appealable order of the Court or such objection is withdrawn.

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<sup>2</sup> For purposes of the Procedures, a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2019, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).



- iii. If the Debtors and the other Notice Parties do not object within such twenty-day period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional twenty-day waiting period. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the other Notice Parties.

### **NOTICE PROCEDURES**

The following notice procedures apply to these Procedures:

- a. No later than three (3) business days following entry of the Interim Order, the Debtors shall serve a notice by first class mail, substantially in the form attached to the Procedures as Exhibit 1F (the “Notice of Interim Order”), on: (i) the U.S. Trustee for the District of New Jersey; (ii) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group; (iii) the entities listed on the consolidated list of creditors holding the thirty largest unsecured claims; (iv) the U.S. Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) any official committees appointed in these chapter 11 cases; (vii) to the extent known, all registered and nominee holders of Common Stock (with instructions to serve down to the beneficial holders of Common Stock). Additionally, no later than three (3) business days following entry of the Final Order, the Debtors shall serve a Notice of Interim Order modified to reflect that the Final Order has been entered (as modified, the “Notice of Final Order”) on the same entities that received the Notice of Interim Order.
- b. All registered and nominee holders of Common Stock shall be required to serve the Notice of Interim Order or Notice of Final Order, as applicable, on any holder for whose benefit such registered or nominee holder holds such Common Stock, down the chain of ownership for all such holders of Common Stock.
- c. Any entity or individual, or broker or agent acting on such entity’s or individual’s behalf who sells Common Stock to another entity or individual, shall be required to serve a copy of the Notice of Interim Order or Notice of Final Order, as applicable, on such purchaser of such Common Stock or any broker or agent acting on such purchaser’s behalf.
- d. To the extent confidential information is required in any declaration described in the Procedures, such confidential information may be filed and served in redacted form; *provided, however*, that any such declarations



served on the Debtors ***shall not*** be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except: (i) to the extent necessary to respond to a petition or objection filed with the Court; (ii) to the extent otherwise required by law; or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to an objection filed with the Court, such confidential information shall be filed under seal or in a redacted form.



**Exhibit 1A**

**Declaration of Status as a Substantial Shareholder**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER**<sup>2</sup>

**PLEASE TAKE NOTICE** that the undersigned party is/has become a Substantial Shareholder with respect to the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, as of \_\_\_\_\_, 2023, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following

<sup>1</sup> 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.

<sup>2</sup> For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares of Common Stock	Date Acquired

(Attach additional page or pages if necessary)

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Final Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Final Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the Substantial Shareholder, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the Substantial Shareholder’s taxpayer identification number and the amount of Common Stock that the Substantial Shareholder beneficially owns.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Substantial Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, \_\_\_\_\_

(City)

(State)



**Exhibit 1B**

**Declaration of Intent to Accumulate Common Stock**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF INTENT TO ACCUMULATE COMMON STOCK**<sup>2</sup>

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the “Proposed Transfer”) one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2023, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Final Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Final Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors and the other Notice Parties have twenty calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors or any of the other Notice Parties file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring, or otherwise accumulating Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(City) (State)



**Exhibit 1C**

**Declaration of Intent to Transfer Common Stock**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF INTENT TO TRANSFER COMMON STOCK**<sup>2</sup>

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the “Proposed Transfer”) one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 8,114,325 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2023, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock after such transfer becomes effective.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Final Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Final Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors and the other Notice Parties have twenty calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors or any of the other Notice Parties file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading, or otherwise transferring Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(City) (State)



**Exhibit 1D**

**Declaration of Status as a 50-Percent Shareholder**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER**

PLEASE TAKE NOTICE that the undersigned party is/has become a 50-Percent Shareholder<sup>2</sup> with respect to one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2019, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.



**PLEASE TAKE FURTHER NOTICE** that, as of \_\_\_\_\_, 2023, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

<b>Number of Shares of Common Stock</b>	<b>Date Acquired</b>

(Attach additional page or pages if necessary)

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Final Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Final Order).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of 50-Percent Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, \_\_\_\_\_

(City)

(State)



**Exhibit 1E**

**Declaration of Intent to Claim a Worthless Stock Deduction**



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

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION**

**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “Worthless Stock Deduction”) with respect to one or more shares of the existing class (or series) of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Cyxtera Technologies, Inc. Cyxtera Technologies, Inc. is a debtor and debtor in possession in Case No. 23-14853 (JKS) pending in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, if applicable, on \_\_\_\_\_, 2023, the undersigned party filed a Declaration of Status as a 50-Percent Shareholder with the Court and served copies thereof as set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

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



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Worthless Stock Deduction, the undersigned party proposes to declare that \_\_\_\_\_ shares of Common Stock became worthless during the tax year ending \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that the last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to that certain *Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Final Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Final Order).

**PLEASE TAKE FURTHER NOTICE** that, at the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, the undersigned party acknowledges that the Debtors and the other Notice Parties have twenty calendar days after receipt of this Declaration to object to the Worthless Stock Deduction described herein. If the Debtors or any of the other Notice parties file an objection, such Worthless Stock Deduction will not be effective unless such objection is withdrawn or such action is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Worthless Stock Deduction may proceed solely as set forth in this Declaration.



**PLEASE TAKE FURTHER NOTICE** that any further claims of worthlessness contemplated by the undersigned party will each require an additional notice filed with the Court to be served in the same manner as this Declaration and are subject to an additional twenty-day waiting period.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.



Respectfully submitted,

(Name of Declarant)

By:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, \_\_\_\_\_

(City)

(State)



**Exhibit 1F**

**Notice of Final Order**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**NOTICE OF FINAL ORDER (I) APPROVING  
NOTIFICATION AND HEARING PROCEDURES FOR  
CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

**TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF THE EXISTING CLASS (OR SERIES) OF COMMON STOCK (THE “COMMON STOCK”) OF CYXTERA TECHNOLOGIES, INC.:**

**PLEASE TAKE NOTICE** that on June 4, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed petitions with the United States Bankruptcy Court for the District of New Jersey (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors’ estates or to exercise control over property of or from the Debtors’ estates.

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_] (the “Motion”).

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



**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], 2023, the Court entered the *Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. \_\_\_\_] (the “Final Order”) approving procedures for certain transfers of and declarations of worthlessness with respect to Common Stock set forth in Exhibit 1 attached to the Final Order (the “Procedures”).<sup>2</sup> The Procedures are available to view and download on the website established by the Debtors’ Claims and Noticing Agent for these chapter 11 cases <https://www.kccllc.net/cyxtera>.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, a Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock or Beneficial Ownership of Common Stock in violation of the Procedures, and any such transaction in violation of the Procedures shall be null and void *ab initio*.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, the Procedures shall apply to the holding and transfers of Common Stock or any Beneficial Ownership therein by a Substantial Shareholder or someone who may become a Substantial Shareholder.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, a 50-Percent Shareholder may not claim a worthless stock deduction with respect to Common Stock or Beneficial Ownership of Common Stock in violation of the Procedures, and any such deduction in violation of the Procedures shall be null and void *ab initio*, and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning given to them in the Interim Order or the Motion, as applicable.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, upon the request of any entity, the proposed notice and claims agent for the Debtors, Kurtzman Carson Consultants LLC, will provide a copy of the Final Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such declarations are also available via PACER on the Court's website at <https://ecf.deb.uscourts.gov/> for a fee, or free of charge by accessing the Debtors' restructuring website at <https://www.kccllc.net/cyxtera>.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Final Order, failure to follow the procedures set forth in the Final Order shall constitute a violation of, among other things, the automatic stay provisions of section 362 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that nothing in the Final Order shall preclude any person desirous of acquiring any Common Stock from requesting relief from the Final Order from this Court, subject to the Debtors' and the other Notice Parties' rights to oppose such relief.

**PLEASE TAKE FURTHER NOTICE** that, other than to the extent that the Final Order expressly conditions or restricts trading in Common Stock, nothing in the Final Order or in the Motion shall, or shall be deemed to, prejudice, impair, or otherwise alter or affect the rights of any holders of Common Stock, including in connection with the treatment of any such stock under any chapter 11 plan or any applicable bankruptcy court order.

**PLEASE TAKE FURTHER NOTICE** that any prohibited purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock, Beneficial Ownership thereof, or option with respect thereto in violation of the Final Order is prohibited and shall be null and void *ab initio* and may be subject to additional sanctions as this court may determine.

**PLEASE TAKE FURTHER NOTICE** that the requirements set forth in the Final Order are in addition to the requirements of applicable law and do not excuse compliance therewith.



Dated: June 4, 2023

*/s/ Michael D. Sirota*

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**COLE SCHOTZ P.C.**

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

Email: msirota@coleschotz.com  
wusatine@coleschotz.com  
fyudkin@coleschotz.com

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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

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

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

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Facsimile: (212) 446-4900

Email: edward.sassower@kirkland.com  
christopher.marcus@kirkland.com  
derek.hunter@kirkland.com

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



This is **Exhibit "Y"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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

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

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

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fyudkin@coleschotz.com

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

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

In re:

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

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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





**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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), (a) authorizing, but not directing, the Debtors to (i) continue performing under existing Hedging Contracts (as defined below), 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, (iii) grant superpriority claims and provide Credit Support (as defined below), as may be necessary; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

### **Jurisdiction and Venue**

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

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

4. The bases for the relief requested herein are sections 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to



third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera's full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

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

#### **The Debtors' Hedging Agreements**

7. In the ordinary course of business, the Debtors operate data centers that offer colocation and interconnectivity services, among other things, which require significant amounts of electricity and power. The Debtors' revenue is therefore exposed to the prevailing market price of electricity which has experienced significant volatility over recent years. To minimize the risk to their business operations caused by such volatility and to secure a fixed contract price, the Debtors, like many of their peers, have historically entered into financial hedging contracts with various counterparties (the "Hedging Contract Counterparties") in the form of forward contracts (collectively, and together with all similar transactions and the agreements under which such transactions are documented, the "Hedging Contracts"). Hedging Contracts protect against



increases in electricity rates that could otherwise threaten the stability of the Debtors' cash flows. By removing a portion of the price volatility associated with future electricity consumption via such hedging arrangements, the Debtors are able to mitigate the potential effects of variability in net cash from operating activities due to fluctuations in electricity prices.

8. In a forward contract, two parties, a buyer and a seller, agree to exchange an asset at a specified price on a specified date in the future. On that specified future date, the seller is obligated to provide the asset to the buyer and the buyer is obligated to purchase the asset at the specified price regardless of the current market prices. By locking in a price, the parties are able to stabilize any risk associated with unpredictable price fluctuations.

9. Hedging Contracts typically comprise various documents memorializing the terms and conditions governing the transactions. These include (i) master agreements, (ii) confirmations issued under general terms and conditions or (iii) single transaction agreements (collectively, the "Transaction Agreements"). The Transaction Agreements set forth the terms and conditions that govern the transactions entered into between the parties from time to time.

10. Where a master agreement is used, a number of widely used standard forms exist for the types of transactions entered into by the Debtors and counterparties, and the parties enter into individual transactions under the master agreements. These individual transactions are customarily documented in the form of confirmations, which set forth, among other terms, certain economic terms and conditions including, for example, the specified quantities and delivery dates or calculation and timing of payment amounts.

11. Furthermore, Hedging Contracts typically include provisions for credit support and obligations to post collateral or performance assurance. Posting of collateral or any type of performance assurance requires the Debtors to periodically deposit money with their



counterparties based on either maximum monthly electricity bill amounts or average monthly electricity bill amounts. A re-evaluation of the credit support requirement generally occurs periodically throughout the term of each Hedging Contract. Re-evaluation often results in one party having either to provide additional collateral or return some of the existing collateral.

12. The types of Hedging Contracts entered into by the Debtors fall under a safe harbor from the automatic stay provided in section 362(b) of the Bankruptcy Code. As a result, any prepetition Hedging Contract could be, and most likely would be, terminated by the counterparty upon the Debtors' chapter 11 filing absent an agreement between the Debtors and such counterparty that would provide the counterparty with protections that are the same or similar to those that the counterparty would expect to receive in respect of transactions entered into with the Debtors during the pendency of these chapter 11 cases. It is therefore critical that the Debtors are granted authority to perform under, and grant superpriority claims to counterparties in respect of, their prepetition Hedging Contracts.

#### **The Debtors' Use of Hedging Contracts**

13. The Debtors enter into Hedging Contracts in the ordinary course of business to hedge the various risks associated with fluctuations in electricity prices. The Debtors do not enter into Hedging Contracts for speculative purposes.

14. The Debtors historically have entered into forward contracts to lock in the price of electricity over the life of the Hedging Contract, which helps to minimize the effect of market extremes. As of the Petition Date, the Debtors are party to fourteen forward Hedging Contracts with four Hedging Contract Counterparties—all of whom are utility providers.<sup>3</sup> The forward

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<sup>3</sup> The Hedging Contract Counterparties are utility providers, including, among others: Calpine, Direct Energy, Constellation, and Shell.



Hedging Contracts are settled on a monthly basis. As of the Petition Date, the Debtors were party to approximately \$56 million in notional amount of forward Hedging Contracts with a mark-to-market liability of approximately \$0.5 million, which reflects the difference between the original purchase price of the Hedging Contracts and the market prices at any current point in time.

15. The Debtors seek authority, but not direction, to continue to honor any prepetition and postpetition obligations arising under the forward Hedging Contracts, adjust, modify, terminate, and otherwise engage in transactions thereunder, and enter into new Hedging Contracts, in the ordinary course of business and consistent with prepetition practices.

#### **Credit Support in Connection with Hedging Contracts**

16. Hedging Contracts often require that one or both parties secure their obligations by providing collateral to the other party (the “Credit Support”). The vast majority of the Debtors’ obligations under their Hedging Contracts are unsecured. However, as of the Petition Date, the Debtors have posted approximately \$4.9 million in respect of collateral calls made by two of the Debtors’ Hedging Contract Counterparties. The Debtors may be required to provide Credit Support in connection with the Hedging Contracts during the pendency of these chapter 11 cases. Therefore, the Debtors seek authority, but not direction, to provide Credit Support, as necessary, in the ordinary course of business on a postpetition basis.

#### **Treatment of Hedge Contracts Under the Bankruptcy Code**

17. Recognizing the unique status of electricity forwards in the financial markets, the Bankruptcy Code applies certain so-called “safe harbor provisions” to Hedging Contracts, allowing the non-debtor counterparty to exercise certain rights and remedies that are not otherwise available to a debtor’s contractual counterparties in a bankruptcy case.



18. *First*, a qualified non-debtor counterparty to a Hedging Contract may terminate and liquidate the Hedging Contract and apply collateral held under the Hedging Contract following commencement of a bankruptcy case to the extent provided for under the Hedging Contract, notwithstanding section 365(e)(1) of the Bankruptcy Code or the automatic stay under section 362 of the Bankruptcy Code. *See* 11 U.S.C. §§ 362(b)(6) & (17), 556, and 560. *Second*, absent any actual intent to defraud, a trustee or debtor in possession cannot avoid any prepetition payments made under a hedging Contract by a debtor to a qualified non-debtor counterparty. *See id.* §§ 546(e) and 546(g). *Third*, to the extent a hedging Contract provides for such action, and it is available under applicable non-bankruptcy law, a qualified non-debtor counterparty is entitled to set off mutual debts and claims against a debtor under a Hedging Contract without needing to seek relief from the automatic stay. *See id.* §§ 362(b)(6) & (17), and 560.<sup>4</sup>

19. The Debtors believe that, notwithstanding the potential rights of the Hedging Contract Counterparties under the “safe harbor provisions,” the Hedging Contract Counterparties may nevertheless be willing to maintain their prepetition Hedging Contracts and enter into new postpetition Hedging Contracts with the Debtors during these chapter 11 cases, but only if such parties have assurance that the Debtors have the authority to enter into and continue to perform under the Hedging Contracts.

20. The Debtors believe, in a prudent exercise of their business judgment, that continuing to perform under existing Hedging Contracts, entering into and performing under new Hedging Contracts, and providing Credit Support as may be necessary is in the best interests of

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<sup>4</sup> By filing this Motion, the Debtors are not expressing a view as to whether any particular contract falls within the scope of these provisions of the Bankruptcy Code. The Debtors expressly reserve all rights and defenses.



their estates. Immediate resumption of a hedging program consistent with prepetition practices would restore vital protection against price fluctuations for the benefit of all stakeholders.

**Basis for Relief Requested**

**I. Section 363(c) of the Bankruptcy Code Authorizes the Debtors to Continue and Enter Into Hedging Contracts.**

21. Section 363(c) of the Bankruptcy Code provides, in relevant part, that a debtor in possession “may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The ordinary course of business standard embodied in this provision is intended to allow a debtor in possession the flexibility to run its business during its chapter 11 proceedings. *Moore v. Brewer (In re HMM Motor Servs., Inc.)*, 259 B.R. 440, 448–49 (Bankr. S.D. Ga. 2000). Furthermore, section 105(a) of the Bankruptcy Code gives the Court broad discretion to issue orders necessary to “carry out the provisions of this title.” 11 U.S.C. § 105(a). Although the Debtors believe that entering into or otherwise modifying Hedging Contracts postpetition is within the ordinary course of their business, the Debtors submit that the Interim Order and Final Order confirming the Debtors’ authority is essential to provide comfort to counterparties that the Debtors have authority to enter into and perform under Hedging Contracts.

22. The Bankruptcy Code does not define “ordinary course of business.” *In re Commercial Mortg. & Fin. Co.*, 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). Courts have, however, clarified that the standard is meant “to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” *Med. Malpractice Ins. Assoc. v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir.



1997) (quoting *In re Watford*, 159 B.R. 597, 599 (M.D. Ga. 1993)); *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (stating that section 363 of the Bankruptcy Code is designed to allow a debtor in possession “flexibility to engage in ordinary transactions without unnecessary . . . oversight”). The two tests ordinarily applied by the courts to determine the ordinary course of business are the “horizontal” test and the “vertical” test. *Denton Cnty. Elec. Co-Op., Inc. v. Eldorado Ranch (In re Denton Cnty. Elec. Coop., Inc.)*, 281 B.R. 876, 882 & n.12 (Bankr. N.D. Tex. 2002); *In re Springfield Contracting Corp.*, 154 B.R. 214, 225–26 (Bankr. E.D. Va. 1993). “The ‘horizontal test’ focuses on the way businesses operate within a given industry. The ‘vertical test’ focuses on the expectations of creditors.” *Id.*

23. Maintaining Hedging Contracts and entering into new Hedging Contracts, in each case, satisfies both tests. Under the horizontal test, Hedging Contracts are typical and common arrangements among companies in the Debtors’ industry. Companies in the collocation and interconnectivity industry regularly enter into these transactions. Accordingly, the Debtors believe maintaining existing Hedging Contracts, as well as entering into, and performing under, new Hedging Contracts fall within the standard, ordinary course conduct of companies in the Debtors’ industry.

24. Under the vertical test, creditors’ reasonable expectations of a debtor’s “ordinary course of business” are based on the debtor’s specific prepetition business practices and norms, and the expectation that the debtor will conform to those practices and norms while operating as a debtor in possession. *In re Garofalo’s Finer Foods, Inc.*, 185 B.R. 414, 425 (ND. Ill. 1995). Thus, a fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Commercial Credit (In re Nat’l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (9th Cir. B.A.P. 1995); *James A. Phillips*, 29 B.R. at 394. The size,



nature and type of business, and the size and nature of the transactions, in question, are all relevant in determining whether the transactions at issue are ordinary. *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 598 (M.D. Tenn. 1990); *Johns-Manville Corp.*, 60 B.R. at 617. “Accordingly, a postpetition transaction undertaken by the debtor that is similar in size and nature to prepetition transactions undertaken by the debtor would be within the ordinary course of business.” *Garofalo’s*, 186 B.R. at 426.

25. In the ordinary course of business, the Debtors enter into, perform under, adjust, modify, settle, and terminate Hedging Contracts. Accordingly, the Debtors believe that entering into Hedging Contracts is consistent with their ordinary course business practices.

26. Moreover, courts in this circuit and others have authorized debtors in various industries, including the Debtors’ industry, to continue or initiate hedging arrangements in the ordinary course of business, pursuant to section 363(c)(1). *See, e.g., In re Extraction Oil & Gas, Inc.* No. 10-11548 (CSS) (Bankr. D. Del. Jul. 13, 2020) (granting authority to continue performing under prepetition hedging agreements and authority to enter into and perform under postpetition hedging agreement and granting superpriority administrative-expense claim status to postpetition hedging obligations); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Feb. 26, 2018) (same); *In re Samson Resources Corporation*, No. 15-11934 (CSS) (Bankr. D. Del. Jan. 27, 2017) (same); *In re Oasis Petroleum North America LLC* No. 20-34771 (MI) (Bankr. S.D. Tex. Sep 30, 2020) (same).<sup>5</sup>

27. To the extent that continuation and entry into Hedging Contracts implicate section 363(b) of the Bankruptcy Code, the Debtors submit that continuing performance under and

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<sup>5</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.



entering into Hedging Contracts would constitute a proper exercise of the Debtors' business judgment. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that debtors "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." Under section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose justifies such actions." *In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) ("This Court follows the 'sound business purpose' test when examining § 363(b) sales.") (Citing *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted). Courts in this and other circuits are loath to interfere with corporate decisions "unless it is shown that the bankrupt's decision was one taken in bad faith or in gross abuse of the bankrupt's retained business discretion." *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985) (applying the business judgment rule to a debtor's decision to reject an executory contract); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

28. There is no question that a sound business purpose exists for the Debtors to continue to perform under prepetition Hedging Contracts and enter into new Hedging Contracts, which would reduce the volatility on the Debtors' cash flow, help the Debtors limit working capital requirements, and, consequently, enhance the value of the Debtors' estates for the benefit of all their stakeholders.



29. Accordingly, the Debtors submit that authority to maintain existing Hedging Contracts and enter into Hedging Contracts is appropriate and in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases and should be permitted.

**II. The Debtors Should Be Authorized to Provide Credit Support and Grant Superpriority Claims Pursuant to Section 364 of the Bankruptcy Code.**

30. Because the transactions under Hedging Contracts are subject to value fluctuations in the ordinary course of business, Hedging Contract Counterparties may, in certain circumstances, require that the Debtors' obligations under Hedging Contracts be secured by various forms of Credit Support, including the granting of superiority claims and/or the granting of liens on certain unencumbered collateral pursuant to sections 364(c)(1) and (2) of the Bankruptcy Code in support of the Debtors' obligations to Hedging Contract Counterparties.

31. Section 364 of the Bankruptcy Code authorizes a debtor to obtain "credit" on a superpriority or senior secured basis when obtaining such credit on other terms is unavailable. 11 U.S.C. §§ 364(c) and (d). Courts generally afford debtors considerable deference to determine, in their business judgment, the terms under which they obtain postpetition secured credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981).

32. The Debtors therefore request authority, but not direction, to grant superiority claims and provide all other necessary Credit Support with respect to (a) those prepetition Hedging Contracts that are not terminated by the applicable Hedging Contract Counterparty and that the Debtors elect, in their business judgment, to maintain in full force and effect, and (b) postpetition Hedging Contracts into which they enter, as applicable, and determine, in their business judgment, are necessary. It is general market practice for parties to Hedging Contracts to be required to



provide Credit Support in the ordinary course of business to assure their performance when they are out-of-the-money. Given the Debtors' financial condition, Hedging Contract Counterparties may not be willing to continue existing, or otherwise enter into new, Hedging Contracts with the Debtors unless those contracts provide for the granting of superiority claims and/or the posting of Credit Support in the form of cash or other collateral to secure the Debtors' obligations under the Hedging Contract.

33. The relief sought herein represents a fair and efficient mechanism for enhancing the value of the Debtors' estates, while providing counterparties with appropriate inducement to not terminate existing, and enter into additional, Hedging Contracts with the Debtors. The Debtors therefore request authority to grant superiority claims and provide Credit Support (a) where necessary to secure their obligations under prepetition Hedging Contracts that are not terminated by the applicable Hedging Contract Counterparty and that the Debtors elect, in their business judgment, to maintain in force, and (b) postpetition Hedging Contracts, as applicable; *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 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 such claims shall be subordinate to the Superpriority Claims<sup>6</sup>. Courts in this circuit and others routinely have granted similar relief. *See e.g., In re Extraction Oil & Gas, Inc.* No. 10-11548 (CSS) (Bankr. D. Del. Jul. 13, 2020) (authorizing debtors to pledge collateral in the form of liens and superpriority claims to

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<sup>6</sup> As defined in the *Debtors' Motion Seeking Entry of an Order (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* (the "Securitization Order"), filed contemporaneously herewith.



hedge counterparties); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Feb. 26, 2018) (same); *In re Samson Resources Corporation*, No. 15-11934 (CSS) (Bankr. D. Del. Jan. 27, 2017) (same); *In re Oasis Petroleum North America LLC* No. 20-34771 (MI) (Bankr. S.D. Tex. Sep 30, 2020) (same).

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

34. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders and it is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Request of Waiver of Stay**

35. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested



in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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

**Reservation of Rights**

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



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

**No Prior Request**

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

**Notice**

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



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**EXHIBIT A**

**Proposed Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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



**INTERIM 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 seven (7), is  
**ORDERED.**



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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")<sup>1</sup> of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for entry of an interim order (this "Interim 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 (on a final basis only); (b) granting related relief; and (c) scheduling a final hearing to consider approval of the Motion on a final basis, 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

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<sup>1</sup> 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: Interim 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

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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 an interim basis as set forth herein.

2. The Final Hearing on the Motion will be held on \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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. 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) subject to entry of the Final Order, 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 prior to entering into new Hedging Contracts.



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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. Nothing in the Motion or this Interim Order waives or modifies the requirements of the RSA, including without limitation, the consent and consultation rights contained therein.

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



(Page | 6)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this 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.

8. 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 Interim Order.

9. 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'



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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designation of any particular check or electronic payment request as approved by this Interim Order.

10. Notwithstanding anything to the contrary contained in the Motion or this 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 *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* filed substantially contemporaneously herewith (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.

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

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

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



(Page | 8)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Order.

17. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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



**Exhibit B**

**Proposed Final Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**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 seven (7), is **ORDERED**.



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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

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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")<sup>1</sup> 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 that the relief requested in the Motion

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<sup>1</sup> 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

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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** 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 prepetition Hedging Contracts that remain in force and the terms of which are amended to the satisfaction of the Debtor party thereto, including paying any prepetition amounts owed thereunder, and modifying the terms thereof, all in the ordinary course of business and (b) enter into new postpetition Hedging Contracts and honor obligations thereunder, all without further order of the Court; *provided, however* that the Debtors shall consult with the Ad Hoc First Lien Group prior to entering into new Hedging Contracts.
3. Pursuant to section 364(c) of the Bankruptcy Code, the Debtors are authorized, but not directed, to 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



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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

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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 (each such order, a "DIP Order"); *provided further*, however, that any superpriority claim granted with respect to postpetition Hedging Agreements shall be subordinate to the Superpriority Claims as defined in *Debtors' Motion Seeking Entry of an Order (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* (the "Securitization Order").

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. Nothing in the Motion or this Final Order waives or modifies the requirements of the RSA, including without limitation, the consent and consultation rights contained therein.

7. 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



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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

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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

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8. 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.

9. 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.

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 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* filed substantially contemporaneously herewith (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions



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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

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thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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

13. 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.

14. 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.

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



This is **Exhibit "Z"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**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  
THERE TO, (C) MAINTAIN EXISTING DEBTOR BANK ACCOUNTS,**

<sup>1</sup> 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.





**BUSINESS FORMS, AND BOOKS AND RECORDS, AND (D) CONTINUE  
INTERCOMPANY TRANSACTIONS AND (II) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final 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; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court,

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105, 345, 363, 364, and 503 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013–1 and 9013–5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) retail colocation—the practice of renting space and power to customers to deploy their technology infrastructure including servers, storage, and security devices in an extremely resilient and highly connected environment; (ii) interconnection services—the practice of connecting information technology equipment to a customer’s network service providers; and (iii) digital exchange services—the practice of offering customers additional resources including the ability to rent Cyxtera-owned servers or the ability to access partner-delivered products and software to help customers holistically manage their hybrid technology systems. Cyxtera offers this advanced suite of services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees worldwide and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to



Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **The Cash Management System**

#### **I. Overview.**

7. In the ordinary course of business, Cyxtera operates a complex cash management system (the “Cash Management System”), a schematic of which is attached as Exhibit 1 to Exhibit A hereto. Cyxtera uses the Cash Management System to collect, transfer, and disburse funds, and to facilitate cash monitoring, forecasting, and reporting. Cyxtera’s treasury department maintains daily oversight of the Cash Management System and implements cash management controls for accepting, processing, and releasing funds, including in connection with any Intercompany Transactions (as defined herein). Cyxtera’s accounting department regularly reconciles Cyxtera’s books and records to ensure that all transfers are accounted for properly.

8. The Cash Management System is similar to those commonly employed by businesses comparable in size and scale to Cyxtera to help control funds, ensure cash availability for each entity, and reduce administrative expenses by facilitating the movement of funds among multiple entities. Cyxtera estimates that its cash receipt collections averaged approximately \$65 million per month in the twelve months prior to the Petition Date. In addition, Cyxtera estimates that total disbursements to third parties averaged approximately \$55 million per month in the twelve months prior to the Petition Date.

9. Because of the nature and operational scale of the Debtors’ business, any disruption to the Cash Management System would have an immediate and material adverse effect on the Debtors’ business and operations, to the detriment of their estates and stakeholders. Accordingly,



to minimize the disruption caused by these chapter 11 cases, the Debtors request authority to continue to use their existing Cash Management System during the pendency of these chapter 11 cases, subject to the terms described herein.

## **II. The Bank Accounts and Flow of Funds.**

10. As of the Petition Date, Cyxtera's Cash Management System is composed of thirty-four bank accounts, (each, a "Bank Account" and, collectively, the "Bank Accounts"). Of those Bank Accounts, fifteen are owned and controlled by the Debtors (the "Debtor Bank Accounts"), four are owned and controlled by non-Debtor affiliate Cyxtera Receivables Holdings, LLC ("Cyxtera Receivables Holdings"), and the other fifteen are owned by foreign-based non-Debtor affiliates (the "Non-Debtor Foreign Bank Accounts" and together with the Receivables Accounts and the Receivables Program Cash Collateral Account (each as defined herein), the "Non-Debtor Bank Accounts") that are direct and indirect subsidiaries of the Debtors. The Debtor Bank Accounts include: (a) seven accounts maintained at Bank of America Corporation ("BoA"); and eight accounts maintained at Citibank, N.A. ("Citibank").

11. The Debtor Bank Accounts consist of (a) five Concentration Accounts, (b) three Payroll Accounts, (c) two Disbursement Accounts, (d) four Foreign Bank Accounts, and (e) the Adequate Assurance Account (each as defined herein). The Debtors maintain one primary concentration account (the "Primary Concentration Account") maintained by Cyxtera Communications, LLC ("Cyxtera Communications"), and four secondary concentration accounts controlled by other Debtors (together with the Primary Concentration Account, the "Concentration Accounts"). All of the domestic Debtors' revenue is received directly into two receivables accounts that are Non-Debtor Bank Accounts (collectively the "Receivables Accounts") maintained by non-Debtor affiliate Cyxtera Receivables Holdings by way of check, wire transfer, and/or electronic fund transfer. This revenue is then automatically transferred on a daily basis to



the Receivables Program Cash Collateral Account maintained by Cyxtera Receivables Holdings with PNC Bank, N.A. (“PNC Bank”) and is manually pushed from the Receivables Program Cash Collateral Account to the Primary Concentration Account via ordinary course Intercompany Transactions on a daily basis to the extent permitted by the Receivables Program (as defined herein). Generally, funds are then transferred from the Primary Concentration Account to the other Debtor Bank Accounts on an as needed basis to make disbursements and support the Debtors’ operations. The Receivables Accounts also play a key role in the Receivables Program, as described in greater detail herein.

12. The Foreign Bank Accounts and the Non-Debtor Foreign Bank Accounts, all but one of which are maintained at banks headquartered in the United States,<sup>3</sup> are used to fund Cyxtera’s operations in Europe, Canada, South America, Australia, and Asia Pacific. The foreign-based Debtors and non-Debtor affiliates generate cash from local operations, which is then collected into the Foreign Bank Accounts and Non-Debtor Foreign Bank Accounts, as applicable. This cash is then used to fund each foreign-based Debtor and non-Debtor affiliates’ business operations. The vast majority of the foreign-based Debtors and non-Debtor affiliates are cash positive and maintain their own operations without the need for regular additional funding. On the occasion when cash from the domestic-based Debtors is needed to fund a foreign-based Debtor or non-Debtor affiliate, the Debtors will make an ordinary course transfer from the Concentration Accounts to the applicable Foreign Bank Account or Non-Debtor Foreign Bank Account. Conversely, excess cash generated from the business operations of the foreign-based Debtors and non-Debtor affiliates is also occasionally repatriated back to the Concentration Accounts from the applicable Foreign Bank Accounts and Non-Debtor Foreign Bank Account to help fund domestic

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<sup>3</sup> Mizuho Bank, Ltd. (“Mizuho”), headquartered in Japan, maintains one Non-Debtor Foreign Bank Account.



business operations. While uncommon, these transfers are an integral part of Cyxtera's Cash Management System and allow Cyxtera to support its global operations when necessary. The Bank Accounts are identified on Exhibit C attached hereto.

13. The Debtors' cash on-hand is largely comprised of proceeds from the Debtors' ongoing business operations. As of the Petition Date, the aggregate balance of funds held in the Debtor Bank Accounts is approximately \$40.7 million. The Bank Accounts include the following, each serving a dedicated function:

Bank Accounts	Description of Accounts
<b>Concentration Accounts</b>	
Primary Concentration Account  <i>Bank of America</i> x4675	Cyxtera Communications maintains the Primary Concentration Account at BoA ending in 4675. All of the domestic Debtors' revenue is first deposited into the two Receivables Accounts maintained by non-Debtor affiliate Cyxtera Receivables Holdings. This revenue is then automatically transferred on a daily basis to the Receivables Program Cash Collateral Account and is then swept manually to the Primary Concentration Account via ordinary course Intercompany Transactions on a daily basis to the extent permitted by the Receivables Program. To support its primary operations, the Debtors then transfer funds manually from the Primary Concentration Account to the Primary Payroll Account and automatically to the Primary Disbursement Account (each as defined herein). The Debtors also maintain four other Concentration Accounts, all of which are manually funded on an as needed basis by the Primary Concentration Account to support the business operations of certain Debtors.
Technologies Concentration Account  <i>Citibank</i> x7036	Debtor Cyxtera Technologies, Inc. (" <u>Cyxtera Technologies</u> ") maintains a concentration account at Citibank ending in 7036 (the " <u>Technologies Concentration Account</u> "). It acts as a general checking account for Cyxtera Technologies, with additional protections, making disbursements as needed to support Cyxtera Technologies' operations. It is rarely used, and the disbursements that are made are generally related to the needs of Cyxtera Technologies' needs as a public company.
Federal Concentration Account  <i>Citibank</i> x9516	Debtor Cyxtera Federal Group, Inc. (" <u>Cyxtera Federal</u> ") maintains a concentration account at Citibank ending in 9516 (the " <u>Federal Concentration Account</u> "). This account supports the business operations of Cyxtera Federal along with liabilities incurred by Travel Cards (as defined herein) issued to Cyxtera Federal employees under the Amex Credit Card Program (as defined herein). Funds from the Federal Concentration Account are transferred manually to the Federal Payroll Account (as defined herein) maintained by Cyxtera Federal to cover its payroll obligations.
Management Concentration Account	Debtor Cyxtera Management, Inc. (" <u>Cyxtera Management</u> ") maintains a concentration account at Citibank ending in 1682 (the " <u>Management Concentration Account</u> "). This account supports the business operations of



Bank Accounts	Description of Accounts
<i>Citibank</i> x1682	Cyxtera Management. Funds from this account are transferred (a) manually to the Management Payroll Account (as defined herein) maintained by Cyxtera Management to cover its payroll obligations and (b) manually to the Management Disbursement Account (as defined herein) maintained by Cyxtera Management upon the presentation of payment for disbursement.
DC Holdings Concentration Account  <i>Citibank</i> x1674	Debtor Cyxtera DC Holdings, Inc. (“ <u>Cyxtera DC Holdings</u> ”) maintains a concentration account at Citibank ending in 1674 (the “ <u>DC Holdings Concentration Account</u> ”). This account supports the business operations of Cyxtera DC Holdings and certain of its subsidiaries.
<b>Payroll Accounts</b>	
Primary Payroll Account  <i>Citibank</i> x5233	<p>The Debtors maintains three payroll accounts (collectively, the “<u>Payroll Accounts</u>”) at Citibank to fund payroll expenses to, and on account of, the Debtors’ employees. Each Payroll Account is manually funded from the Concentration Accounts in an amount sufficient to cover biweekly payroll disbursements prior to their initiation each pay period. Ultimate Kronos Group (“<u>UKG</u>”), a third-party vendor, handles the actual payroll payments. In making these payments, UKG requests cash from the Payroll Accounts and funds the payroll through ACH transfers. The Payroll Accounts are essentially zero balance accounts but maintain a small balance to cover certain Bank Fees (as defined herein) and other account maintenance obligations.</p> <p>Cyxtera Communications maintains a payroll account at Citibank ending in 5233 (the “<u>Primary Payroll Account</u>”). It is manually funded by the Primary Concentration Account and is used to cover general payroll expenses to, and on account of, the Debtors’ employees.</p>
Federal Payroll Account  <i>Citibank</i> x782	Cyxtera Federal maintains a payroll account at Citibank ending in 782 (the “ <u>Federal Payroll Account</u> ”). It is manually funded by the Federal Secondary Concentration Account and is used to cover the payroll obligations of Cyxtera Federal.
Management Payroll Account  <i>Citibank</i> x803	Cyxtera Management maintains a payroll account at Citibank ending in 803 (the “ <u>Management Payroll Account</u> ”). It is manually funded by the Management Concentration Account and is used to cover Cyxtera Management’s payroll obligations.
<b>Disbursement Accounts</b>	
Primary Disbursement Account  <i>Bank of America</i> x9364	<p>The Debtors maintain two disbursement accounts (collectively, the “<u>Disbursement Accounts</u>”) to cover the Debtors’ accounts payable in the ordinary course.</p> <p>Cyxtera Communications maintains a disbursement account at BoA ending in 9364 (the “<u>Primary Disbursement Account</u>”). The Primary Disbursement Account is manually funded by the Primary Concentration Account upon the presentation of payment for disbursement and is used to cover in the ordinary course (a) the Debtors’ general accounts payable, (b) liabilities incurred by Cyxtera Communications’ employees under the Amex Credit Card Program, (c) the Receivables Program Fees (as defined herein), and (d) Debtor Cyxtera</p>



Bank Accounts	Description of Accounts
	Netherlands B.V.'s (" <u>Cyxtera Netherlands</u> ") accounts payable after the conversion of funds from U.S. dollars to euros,
<p>Management Disbursement Account</p> <p><i>Citibank</i> x4505</p>	<p>Cyxtera Management maintains a disbursement account at Citibank ending in 4505 (the "<u>Management Disbursement Account</u>"). It is manually funded by the Management Concentration Account upon the presentation of payment for disbursement and is used to cover Cyxtera Management's accounts payable in the ordinary course along with liabilities incurred by Cyxtera Management's employees under the Amex Credit Card Program and the liabilities incurred by the foreign-based Debtors and non-Debtor affiliates under the Legacy Credit Card Program (as defined herein).</p>
<b>Foreign Bank Accounts<sup>4</sup></b>	
<p><i>Bank of America</i> x8206, x8214, x8230, x8222,</p>	<p>The Debtors maintain four accounts at BoA that are used to fund the Debtors' operations in Canada (the "<u>Foreign Bank Accounts</u>").</p> <p>Debtor Cyxtera Canada Communications, ULC ("<u>Cyxtera Canada</u>") maintains four Foreign Bank Accounts at BoA as part of a generally self-sustaining cash management system that mimics the structure of the main Cash Management System. Funds generated from Cyxtera Canada's operations are initially received into two accounts ending in 8230 and 8206 that act as receivables accounts. These funds are swept automatically into the Foreign Bank Account ending in 8222, which acts a concentration account. When disbursing payments, Cyxtera Canada then transfers funds automatically to the Foreign Bank Account ending in 8214, which acts as a disbursement account.</p> <p>Cyxtera Canada is cash positive and maintain their operations without the need for regular additional funding from the domestic-based Debtors. Nevertheless, the Foreign Bank Accounts are connected to the Concentration Accounts, which allows funds to occasionally flow to Cyxtera Canada as necessary. Excess cash generated from Cyxtera Canada's business operations is also occasionally repatriated back to the Concentration Accounts to help fund domestic business operations</p>
<b>Adequate Assurance Account</b>	
<p><i>Bank of America</i> x0762</p>	<p>Cyxtera Communications maintains the BoA account ending in 0762 (the "<u>Adequate Assurance Account</u>"). The Adequate Assurance Account will hold \$5.3 million as adequate assurance for utility providers as further described in the Utilities Motion.<sup>5</sup></p>

<sup>4</sup> The Foreign Bank Accounts maintained by BoA are located at its branches in Canada.

<sup>5</sup> Contemporaneously herewith, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, and (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* (the "Utilities Motion"). The Adequate Assurance Account will be funded in accordance with the procedures set forth in the Utilities Motion.



Bank Accounts	Description of Accounts
<b>Non-Debtor Bank Accounts</b>	
<p>Receivables Accounts</p> <p><i>Bank of America</i> x9862 x9930</p>	<p>Non-Debtor affiliate Cyxtera Receivables Holdings maintains two Receivables Accounts at BoA ending in 9862 and 9930, both of which are controlled solely by PNC Bank pursuant to a Deposit Account Control Agreement (as defined herein). The Receivables Accounts are funded by revenue and accounts receivable generated by the domestic Debtors' business operations. The Receivables Accounts and all funds from time to time on deposit therein are pledged to PNC Bank as collateral for the Receivables Program. All of the domestic Debtors' revenue enters the Cash Management System through the Receivables Accounts and is automatically transferred on a daily basis to the Receivables Program Cash Collateral Account, from which it is then transferred manually to the Primary Concentration Account maintained by Debtor Cyxtera Communications on a daily basis via ordinary course Intercompany Transactions to the extent permitted by the Receivables Program.</p>
<p>Receivables Program Cash Collateral Account</p> <p><i>PNC Bank</i> x0354</p>	<p>Non-Debtor affiliate Cyxtera Receivables Holdings maintains a cash collateral account (the "<u>Receivables Program Cash Collateral Account</u>") at PNC Bank ending in 0354 that is subject to a Deposit Account Control Agreement (as defined herein) with PNC Bank. The Receivables Program Cash Collateral Account receives all funds deposited to the Receivables Accounts and is subject to PNC Bank's control pursuant to the Receivables Program. The Receivables Program Cash Collateral Account and all funds from time to time on deposit therein are pledged to PNC Bank as collateral for the Receivables Program and are used to make payments from time to time due under the Receivables Program. Subject to satisfaction of the relevant conditions precedent under the Receivables Program, excess available funds on deposit in the Receivables Program Cash Collateral Account are transferred manually to the Primary Concentration Account maintained by Debtor Cyxtera Communications on a daily basis via ordinary course Intercompany Transactions.</p>
<p>Inactive Account</p> <p><i>Bank of America</i> x6463</p>	<p>Non-Debtor affiliate Cyxtera Receivables Holdings maintains an inactive account at BoA ending in 6463 that is part of the Receivables Program.</p>
<p>Non-Debtor Foreign Bank Accounts</p> <p><i>Bank of America</i>  x1017, x1025, x01011, x20, x7014, x12, x38, x4028, x4010, x4031, x4015, x4023</p> <p><i>Citibank</i> x261</p> <p><i>Mizuho</i> x9178</p>	<p>The Debtors' foreign-based non-Debtor affiliates maintain eleven Non-Debtor Foreign Bank Accounts at BoA, Citibank, and Mizuho, which act as concentration accounts for the applicable foreign-based non-Debtor affiliate. The Non-Debtor Foreign Bank Accounts are used to support Cyxtera's operations in Japan, Germany, Asia Pacific, South America, and Australia. The vast majority of the foreign-based non-Debtor affiliates are cash positive and maintain their operations without the need for regular additional funding from the domestic-based Debtors. On the occasion when cash from the domestic-based Debtors is needed to fund a foreign-based non-Debtor affiliate, the domestic-based Debtors will make an ordinary course Intercompany Transaction from a Concentration Account to the applicable Non-Debtor Foreign Bank Account. Conversely, excess cash generated from the business operations of the foreign-based non-Debtor affiliates is also occasionally repatriated back to the Concentration Accounts maintained by the domestic-based Debtors from the applicable Non-Debtor Foreign Bank Account to help fund domestic business operations via ordinary course Intercompany Transactions.</p>



Bank Accounts	Description of Accounts
<p>Shared Operations Account</p> <p><i>Bank of America</i></p> <p>x3018</p>	<p>Debtor Cyxtera Netherlands does not maintain a Bank Account due to its small operational footprint and minimal cash flow. Thus, customer receipts received by Cyxtera Netherlands are deposited into a shared operations account (the “<u>Shared Operations Account</u>”) ending in 3018 maintained by foreign-based non-Debtor affiliate Cyxtera Germany GmbH (“<u>Cyxtera Germany</u>”) in euros. As explained herein, these funds are then converted to U.S. dollars and transferred to the Primary Concentration Account via ordinary course Intercompany Transactions on at least a weekly basis.</p>

### III. Compliance with the Bankruptcy Code and Guidelines.

#### A. Compliance with U.S. Trustee Guidelines and Section 345 of the Bankruptcy Code.

14. Section 345(a) of the Bankruptcy Code governs a debtor’s cash deposits during a chapter 11 case and authorizes deposits of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” To comply with section 345 of the Bankruptcy Code, the *Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees* (the “U.S. Trustee Guidelines”) for the United States Trustee for the District of New Jersey (the “U.S. Trustee”) generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized bank depository that agrees to comply with certain requirements set by the U.S. Trustee (each, an “Authorized Depository”). Section 345(b) of the Bankruptcy Code requires a debtor’s bank to post a bond unless a debtor’s funds are “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States.” 11 U.S.C. § 345(b).

15. The banks where the Debtor Bank Accounts are maintained—Citibank and BoA and its foreign affiliates (collectively, the “Cash Management Banks”)—are Authorized Depositories or foreign affiliates of Authorized Depositories under the U.S. Trustee Guidelines. Likewise, most of the Debtor Bank Accounts are insured by the Federal Deposit Insurance



Corporation (the “FDIC”). The remaining Debtor Bank Accounts are the Foreign Bank Accounts. BoA’s foreign affiliates are well-capitalized, financially stable, and reputable institutions. Further, relocating the Foreign Bank Accounts to U.S.-only accounts could have potentially significant tax or regulatory impacts. Cause exists to allow the Debtors to continue utilizing the Foreign Bank Accounts consistent with historical practices.

16. Pursuant to the foregoing, the Debtors request a thirty-day waiver of the requirements of section 345(b), subject to the Debtors’ rights to seek further extensions thereof. In any event, the Debtors will continue to work in good faith with the U.S. Trustee to address any concerns regarding the continued use of Foreign Bank Accounts on a postpetition basis.

**B. Compliance with U.S. Trustee Guidelines as to Business Forms and Books and Records.**

17. As part of the Cash Management System, the Debtors use a variety of preprinted business forms (including letterhead, correspondence forms, invoices, and other business forms) in the ordinary course of business (collectively, and as they may be modified from time to time, the “Business Forms”). The Debtors also maintain books and records to document their financial results and a wide array of operating information (collectively, the “Books and Records”). To avoid a material disruption to their business operations and to minimize administrative expense to their estates, the Debtors request authorization to continue using all of the Business Forms and Books and Records in a manner consistent with prepetition practice, without reference to the Debtors’ status as chapter 11 debtors in possession.

**IV. Bank Accounts and Fees.**

18. In the ordinary course of business, the Debtors incur periodic service charges and other fees in connection with maintenance of the Cash Management System (collectively, the “Bank Fees”). The Debtors incur approximately \$50,000 in the aggregate in Bank Fees each



month under the Cash Management System to maintain the Debtor Bank Accounts. The Debtors estimate that they owe approximately \$50,000 total in prepetition Bank Fees as of the Petition Date. To maintain the integrity of their Cash Management System, the Debtors seek authority to continue paying Bank Fees, including any Bank Fees that are owed as of the Petition Date, in the ordinary course on a postpetition basis, consistent with historical practice.

**V. The Receivables Program.**

19. In addition to the Debtor Bank Accounts, as of the Petition Date, the Cash Management System also includes two Receivables Accounts held by non-Debtor affiliate Cyxtera Receivables Holdings<sup>6</sup> at BoA, which are used in connection with the Debtors' accounts receivables securitization program (the "Receivables Program").<sup>7</sup> As part of the Receivables Programs, the Receivables Accounts collect receipts on account of certain trade receivables (the "Receivables") generated by Debtors Cyxtera Communications and Cyxtera Federal Group that are sold to Cyxtera Receivables Holdings.

20. Cyxtera Receivables Holdings also maintains the Receivables Program Cash Collateral Account, which is associated with the Receivables Program. Funds received in the two Receivables Accounts are automatically transferred daily to the Receivables Program Cash Collateral Account. Funds in the Receivables Program Cash Collateral Account are used to make payments from time to time due under the Receivables Program. Subject to satisfaction of the relevant conditions precedent under the Receivables Program, on a daily basis, excess available

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<sup>6</sup> Cyxtera Receivables Holdings is a bankruptcy-remote special purpose entity under Delaware law.

<sup>7</sup> A detailed description of the Receivables Program can be found in the *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* (the "Receivables Motion"), filed substantially contemporaneously herewith. Pursuant to the Receivables Motion, the Debtors seek authority to maintain the Receivables Program on a postpetition basis.



funds on deposit in the Receivables Program Cash Collateral Account are manually swept into the Primary Concentration Account via an ordinary course Intercompany Transaction.

21. Additionally, Cyxtera Receivables Holdings makes certain yield and other fee payments to PNC Bank (the “Receivables Program Fees”) through the Receivables Program Cash Collateral Account maintained by Cyxtera Receivables Holdings or the Primary Disbursement Account maintained by Debtor Cyxtera Communications. Further, as security under the Receivables Program, PNC Bank, Cyxtera Receivables Holdings and one or more Debtors entered into deposit account control agreements (each, a “Deposit Account Control Agreement”) with respect to the Receivables Accounts and the Receivables Program Cash Collateral Account.

22. The Receivables Program allows the Debtors to address certain of their near-term liquidity needs through monetization of the Receivables. Through the Receivables Program, the Debtors are able to promptly receive cash on account of the Receivables sold to non-Debtor Cyxtera Receivables Holdings (effectively shortening the collection period with respect to those Receivables). The Receivables Program thus provides an important source of liquidity and operational flexibility for the Debtors. As such, it is crucial that the Debtors be authorized to continue operating under the Receivables Program as part of their Cash Management System.

## **VI. Credit Card Programs.**

23. As part of the Cash Management System, Cyxtera provides certain employees with access to travel and travel-related expense credit cards (“Travel Cards”) and purchase credit cards (“P-Cards”) issued by American Express (collectively, the “Amex Credit Cards”) as part of its Amex credit card program (the “Amex Credit Card Program”). The Amex Credit Cards issued under the Amex Credit Card Program are used to cover certain approved air travel expenses, non-air travel expenses, such as hotel stays and meals, and other miscellaneous expenses. Cyxtera Communications, Cyxtera Federal, Cyxtera Management, and Cyxtera Technologies pay the



balances accrued on the Amex Credit Cards directly for approved charges made by their respective employees through the applicable Disbursement Account or Concentration Account. Employees receive monthly billing statements that reflect the payments these entities made on their behalf. For any expenses not approved by these entities, the employees are responsible for paying the accrued balances on the Amex Credit Cards directly.

24. Cyxtera also maintains a legacy credit card program (the “Legacy Credit Card Program,” and together with the Amex Credit Card Program, the “Credit Card Programs”), which provides Cyxtera’s employees with P-Cards issued by Citibank (the “Legacy Credit Cards,” and together with the Amex Credit Cards, the “Credit Cards”). The Legacy Credit Card Program combines the features of a corporate credit card with a P-Card and is maintained solely for the benefit of international employees who would otherwise have problems using the Amex Credit Card Program due to their location or need to make international purchases. All obligations incurred under the Legacy Credit Card Program on account of foreign-based employees at Debtors Cyxtera Netherlands, Cyxtera Canada, Cyxtera Canada TRS, ULC, and, as more fully described herein, the Debtors’ foreign-based non-Debtor affiliates are paid by Debtor Cyxtera Management through the Management Disbursement Account.

25. The Debtors incur approximately \$200,000 each month under the Cash Management System to maintain the Credit Card Programs, approximately \$180,000 of which is on account of the Amex Credit Card Program and approximately \$20,000 of which is on account of the Legacy Credit Card Program. The Debtors estimate that they owe approximately \$120,000 in prepetition obligations related to the Credit Card Programs as of the Petition Date, approximately \$100,000 of which is on account of the Amex Credit Card Program and approximately \$20,000 of which is on account of the Legacy Credit Card Program.



26. The Credit Card Programs are an integral part of Cyxtera's Cash Management System. Employees continued use of the Credit Cards for expense and travel purposes and the Debtors' ability to pay the balances accrued on the Credit Cards through the Credit Card Programs is essential to the continued operation of the Debtors' businesses. Accordingly, the Debtors seek authority, but not direction, to issue Credit Cards pursuant to the Credit Card Programs consistent with prepetition practice in the ordinary course of business, 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 limitation, making payments on account of charges that were made under the Credit Card Programs both prior to and after the Petition Date.

## **VII. Intercompany Transactions.**

27. As explained above, Cyxtera operates as a global enterprise, and thus, in the ordinary course of business, the Debtors maintain and engage in routine business relationships with each other and their non-Debtor affiliates (such transactions, the "Intercompany Transactions"), resulting in intercompany receivables and payables (the "Intercompany Balances"). The Debtors generally account for and record all Intercompany Transactions and Intercompany Balances in their centralized accounting system, the results of which are recorded on the Debtors' balance sheets and regularly reconciled.

28. The vast majority of the foreign-based non-Debtor affiliates are cash positive and maintain their operations without the need for regular additional funding from the Debtors. On the occasion when cash is needed to fund a foreign-based non-Debtor affiliate, the domestic-based Debtors will make an ordinary course transfer from a Concentration Account to the applicable Non-Debtor Foreign Bank Account to cover business operations and costs such as employee payroll, payments to vendors, and benefits and expenses incurred by the international offices, including rent, utilities, and similar operational costs. In the past twelve months, the



domestic-based Debtors remitted an aggregate amount of approximately \$18 million to the foreign-based Debtors and non-Debtor affiliates. Conversely, excess cash generated from the business operations of the foreign-based Debtors and non-Debtor affiliates is also occasionally repatriated back to the Concentration Accounts maintained by the domestic-based Debtors to help fund domestic business operations. In the past twelve months, the domestic Debtors received an aggregate amount of approximately \$7 million from foreign-based Debtors and non-Debtor affiliates due to excess cash from foreign operations.

29. As explained above, the Debtors also maintain the Legacy Credit Card Program, which is used by both the foreign Debtors and non-Debtor foreign affiliates. Debtor Cyxtera Management is directly responsible for paying down all liabilities incurred by both the foreign Debtors and the foreign-based non-Debtor affiliates under the Legacy Credit Card Program. Cyxtera Management makes these payments out of the Management Disbursement Account, resulting in Intercompany Balances between Cyxtera Management and the applicable foreign-based non-Debtor affiliates.

30. The Debtors regularly engage in Intercompany Transactions in the ordinary course related to Debtor Cyxtera Netherlands. Cyxtera Netherlands does not maintain any Bank Accounts due to its small operational footprint. Instead, all customer receipts generated by Cyxtera Netherlands are deposited directly into the Shared Operations Account maintained by non-Debtor Cyxtera Germany. All of these funds are then transferred from the Shared Operations Account to the Primary Concentration Account maintained by Debtor Cyxtera Communications via an Intercompany Transaction on at least a weekly basis and are converted into U.S. dollars. Due to Cyxtera Netherlands' small operational footprint, these Intercompany Transactions involve minimal amounts of cash and are simple for the Debtors to ascertain, trace, and account for.



31. The Debtors also regularly engage in Intercompany Transactions with non-Debtor affiliate Cyxtera Receivables Holdings in the ordinary course of business as part of the Cash Management System. Most notably, as part of the Receivables Program described above, Debtor Cyxtera Communications and non-Debtor affiliate Cyxtera Receivables Holdings engage in ordinary course Intercompany Transactions involving the transfer of Receivables and cash between the Receivables Accounts and the Receivables Program Cash Collateral Account (each of which is held by Cyxtera Receivables Holdings and pledged to PNC Bank as collateral for the Receivables Program) and the Primary Concentration Account, as well due to payments on account of the Receivables Program Fees from the Primary Disbursement Account. In addition to its role in the Receivables Program, the Receivables Accounts are also maintained for the collection of all other revenue generated by the domestic Debtors' business operations. This revenue is automatically transferred on a daily basis to the Receivables Program Cash Collateral Account. Funds in the Receivables Program Cash Collateral Account are used to make payments from time to time due under the Receivables Program. Subject to satisfaction of the relevant conditions precedent under the Receivables Program, excess available funds on deposit in the Receivables Program Cash Collateral Account are manually swept to the Primary Concentration Account maintained by Debtor Cyxtera Communications on a daily basis via ordinary course Intercompany Transactions.

32. The Intercompany Transactions are an essential component of Cyxtera's operations and centralized Cash Management System. Any interruption of the Intercompany Transactions would severely disrupt the Debtors' operations and greatly harm the Debtors' estates and their stakeholders as these Intercompany Transactions are integral in allowing Cyxtera to support its global operations. Accordingly, the Debtors seek authority—and, to the extent applicable, relief



from the automatic stay—to continue the Intercompany Transactions (including with respect to “netting” or setoffs) in the ordinary course of business on a postpetition basis, including transfers to/from the Receivables Accounts and the Receivables Program Cash Collateral Account under the Receivables Program and Intercompany Transactions with non-Debtor affiliates, in a manner consistent with the Debtors’ past practice.<sup>8</sup>

### **Basis for Relief Requested**

#### **I. Maintaining the Existing Cash Management System Is Essential to Maximizing the Value of the Debtors’ Estates.**

33. The Cash Management System constitutes an ordinary course and essential business practice of the Debtors. The Cash Management System provides material benefits to the Debtors including, among other things, the ability to control corporate funds, ensure the availability of funds when necessary, and reduce costs and administrative expenses by facilitating the movement of funds and developing timely and accurate account balance information. Thus, to ensure the stable operation of the Debtors’ business and realize the benefits of the Cash Management System, the Debtors should be allowed to continue using the Cash Management System, including the Credit Card Programs, and should not be required to open new bank accounts.

34. Pursuant to 28 U.S.C. § 586(a)(3) and the U.S. Trustee Guidelines, debtors in possession are required to, among other things: (a) close all existing bank accounts and open new debtor in possession accounts; (b) establish one debtor in possession bank account for all estate monies required for the payment of taxes, including payroll taxes; and (c) maintain a separate

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<sup>8</sup> This Motion provides an overview of the Debtors’ typical Intercompany Transactions. The relief requested herein is applicable with respect to all Intercompany Transactions and is not limited to those Intercompany Transactions described in this Motion. To the extent that there are any outstanding prepetition obligations related to Intercompany Transactions not described herein, the Debtors, out of an abundance of caution, seek authority to honor such obligations.



debtor in possession account for cash collateral (collectively, the “Accounting Requirements”). The Accounting Requirements are intended to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent inadvertent payment of prepetition claims. Considering the breadth and complexity of the Debtors’ international businesses and financial affairs and the sheer volume of collections, disbursements, and movement of funds through the Cash Management System on a daily basis, enforcement of the Accounting Requirements during these chapter 11 cases would severely disrupt the ordinary financial operations of the Debtors by reducing efficiencies and causing unnecessary expense.

35. Notwithstanding the Accounting Requirements, continuation of the Cash Management System, including the Credit Card Programs, is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Bankruptcy courts routinely treat requests for authority to continue using existing cash management systems as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In addition, in granting such relief, courts recognize that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in relevant part*, 997 F.2d 1039, 1061 (3rd Cir. 1993). As a result, courts have concluded that the requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (noting that debtor’s cash



management system allowed it “to administer more efficiently and effectively its financial operations and assets”).

36. To accomplish the goals of the Accounting Requirements without the burden and expense of overhauling the Cash Management System in the early days of these chapter 11 cases, the Debtors, with the assistance of their advisors, have implemented internal control procedures that prohibit payments on account of prepetition debts without the prior approval of the Debtors’ treasury department. In light of such protective measures, the Debtors submit that parties in interest will not be harmed by their maintenance of the Cash Management System, including the Credit Card Programs.

37. Requiring the Debtors to adopt a new, segmented cash management system during these chapter 11 cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors’ operations. Importantly, the Cash Management System provides the Debtors with the ability to track and report the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Any disruption of the Cash Management System, including the Credit Card Programs, could have a negative effect on the Debtors’ restructuring efforts.

38. By contrast, maintaining the current Cash Management System will facilitate the Debtors’ transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies. Maintaining the current Cash Management System will also allow the Debtors’ treasury and accounting employees to focus on their daily responsibilities. The Debtors can distinguish between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new ones. With the



protective measures put in place by the Debtors and their advisors, the benefits of continuing the Cash Management System decidedly outweigh the costs.

39. In addition, all Cash Management Banks where the Debtors maintain Debtor Bank Accounts have been or are in the process of being advised not to honor checks, drafts, or other requests for payment issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and as directed by the Debtors. Therefore, the goals of the U.S. Trustee Guidelines can be satisfied, and the Debtors' creditors will be protected without closing the Bank Accounts.

40. As part of the requested relief, the Debtors also seek a waiver of the requirement to establish specific bank accounts for tax payments. The Debtors' tax obligations can be paid out of the Debtor Bank Accounts as they are in the ordinary course of business, and the U.S. Trustee can adequately monitor the flow of funds into, among, and out of the accounts, as set forth in the required reporting. Moreover, the creation of a new debtor-in-possession account designated solely for tax obligations would be unnecessary and inefficient.

41. In further connection with the Cash Management System, the Debtors request authorization to continue to pay, honor, or deduct certain Bank Fees from the appropriate accounts. Payment of the Bank Fees will minimize disruption to the Debtors' operations and is therefore in the best interests of their estates. Absent payment of the Bank Fees, the Cash Management Banks might assert setoff rights against the funds in the Bank Accounts, freeze the Debtor Bank Accounts, and/or refuse to provide banking services to the Debtors. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek authority, in their sole discretion, to pay and/or reimburse the Cash Management Banks in the ordinary course of business for any Bank Fees arising prior to or after the Petition Date.



42. For these reasons, the Debtors submit that cause exists to continue to allow the Debtors to use the existing Debtor Bank Accounts as described herein. The Debtors will work in good faith with the U.S. Trustee, however, to resolve any concerns regarding the continued use of these accounts on a postpetition basis.

43. Courts in this and other districts have regularly allowed debtors in large chapter 11 cases to maintain their existing cash management systems and such relief generally is non-controversial. *See, e.g., In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (authorizing the debtors to continue using the cash management system maintained by the debtors prepetition on an interim basis); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 17, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (authorizing the debtors to continue using the cash management system maintained by the debtors prepetition on a final basis); *In re L'Occitane, Inc.*, No. 21-10632 (MBK) (Bankr. D.N.J. Feb. 25, 2021) (same); *In re Modell's Sporting Goods, Inc.*, Case No. 20-14179 (VFP) (Bankr. D.N.J. June 24, 2020) (same).

## **II. Authorizing the Debtors to Continue Using Debit, Wire, Credit Card, and ACH Payments is Warranted.**

44. The Debtors request that the Court grant further relief from any applicable guidelines to the extent they require the Debtors to make all disbursements by check. In the ordinary course of business, the Debtors conduct transactions through methods, including, but not limited to, wires, ACH transactions, direct deposits, and other similar methods. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts, and payments to vendors could be delayed, resulting in unnecessary disruption to their business operations and the incurrence of additional costs to their estates.



**III. The Court Should Authorize the Debtors to Continue Conducting Intercompany Transactions in the Ordinary Course and Grant Administrative Priority Status to Postpetition Intercompany Claims.**

45. The Debtors' funds move through the Cash Management System as described above. At any given time, there may be intercompany claims (the "Intercompany Claims") owed by one Debtor to another Debtor and/or by a non-Debtor affiliate to a Debtor in the ordinary course as part of the Cash Management System. The Debtors track all fund transfers in their accounting system and can ascertain, trace, and account for all Intercompany Transactions previously described. The Debtors, moreover, will continue to maintain records of such Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors' and their estates' detriment. Further, granting the Debtors relief to continue Intercompany Transactions between Debtors and non-Debtor affiliates is warranted under the circumstances. If any of the non-Debtor affiliates were to be severed from the Cash Management System, it may not be able to meet its obligations as they come due, which may in turn have adverse, value-destructive consequences across the entire Cyxtera corporate structure. Additionally, the Debtors anticipate that postpetition Intercompany Transactions with non-Debtor affiliates will be consistent with those prepetition. Accordingly, the Debtors submit that the continued performance of the Intercompany Transactions is in the best interest of the Debtors' estates and their creditors and, therefore, the Debtors should be permitted to continue such performance.

46. The Debtors submit that postpetition Intercompany Transactions arising in the ordinary course are authorized as a matter of law pursuant to section 363(c)(1) of the Bankruptcy Code, and no additional relief is required. However, out of an abundance of caution, the Debtors request authority to continue to enter into the Intercompany Transactions in the ordinary course of business and in accordance with the Interim Order and Final Order after the Petition Date.



47. Because these transactions represent extensions of intercompany credit made in the ordinary course of the Debtors' operations that are an essential component of the Cash Management System, the Debtors request the authority to continue conducting the Intercompany Transactions in the ordinary course of business without need for further Court order and request that pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all postpetition payments (or other transfer of cash, whether to or from the Debtors) from a Debtor to another Debtor or a non-Debtor affiliate on account of a postpetition Intercompany Transaction be accorded administrative expense status, subject and junior to any claims, including adequate protection claims, cash collateral and/or claims for postpetition financing, granted in connection with approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements. This relief will ensure that each entity receiving payments from a Debtor will continue to bear ultimate repayment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions would jeopardize the recoveries available to each Debtor's respective creditors.

48. The Debtors further submit that the relief requested herein fairly balances the Debtors' need to facilitate the ordinary course operation of their business, minimize disruption, and preserve value, on the one hand, with the interests of their stakeholders in transparency, on the other hand. The requested relief will also ensure that a Debtor's estate will not be unduly burdened by the cost of transfers.

49. Similar relief has been granted in other comparable multi-debtor chapter 11 cases in this district and others. *See, e.g., In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (authorizing the continued performance of the intercompany transactions by the debtors on an interim basis); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J.



May 17, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (authorizing the continued performance of the intercompany transactions by the debtors on a final basis); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sept. 22, 2022) (same); *In re L'Occitane, Inc.*, No. 21-10632 (MBK) (Bankr. D.N.J. Feb. 25, 2021) (same).

**IV. The Court Should Authorize the Debtors to Continue Using Existing Business Forms and Books and Records.**

50. To avoid disruption of the Cash Management System and unnecessary expenses, the Debtors request authorization to continue to use the Business Forms and Books and Records substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession.

51. The Debtors submit that parties in interest will not be prejudiced by this relief. Parties doing business with the Debtors likely will be aware of their status as debtors in possession and, thus, changing Business Forms is unnecessary and would be unduly burdensome. The Debtors further submit that once they have exhausted their existing stock of Business Forms, they shall ensure that any new Business Forms are clearly labeled “Debtors in Possession.” With respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled “Debtors in Possession.”

52. The Debtors should also be permitted to maintain their existing Books and Records rather than open a new set as required under the U.S. Trustee Guidelines. The Debtors use a sophisticated recordkeeping system that enables them to consolidate their Books and Records for financial reporting purposes while tracking operations and results of individual entities across their corporate structure. Continued use of the Debtors’ current Books and Records, therefore, will maximize efficiency and reduce administrative strain on the Debtors in these chapter 11 cases.



**V. Authorizing the Cash Management Banks to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course of Business is Warranted.**

53. As discussed above, strict implementation of the U.S. Trustee Guidelines would needlessly interrupt the Debtors' operations and impair the Debtors' efforts to preserve the value of their estates and reorganize in an efficient manner. Thus, the Debtors request that the Court authorize the Cash Management Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business. In this regard, the Cash Management Banks should be authorized to receive, process, honor, and pay any and all checks, ACH transfers and other instructions, and drafts payable through, drawn, or directed on such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto. Notwithstanding the foregoing, any check, draft, or other notification that the Debtors advise the Cash Management Banks to have been drawn, issued, or otherwise presented before the Petition Date may be honored by the Cash Management Banks only to the extent authorized by order of the Court.

54. The Debtors further request that the Court authorize the Cash Management Banks to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, wires, or ACH transfers are dated before or after the Petition Date. The Debtors also request that, to the extent a bank honors a prepetition check or other item drawn on any account either: (a) at the direction of the Debtors; (b) in a good-faith belief that the Court has authorized such prepetition check or item to be honored; or (c) as a result of a mistake made despite implementation of customary item handling procedures, such bank will not be deemed to be liable to the Debtors, their estates, or any other party on account of such



prepetition check or other item honored postpetition. The Debtors submit that such relief is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

55. Moreover, the Debtors request that the Court authorize the Cash Management Banks to (a) continue to charge the Debtors the Bank Fees, as applicable, and (b) charge-back returned items to the Bank Accounts, whether such items are dated before, on, or subsequent to the Petition Date, in the ordinary course of business. The Debtors further request that the Court order that liens on any of the Bank Accounts granted to creditors will not have priority over the Bank Fees of the respective bank at which the Bank Account is located. Finally, the Debtors request that the Court authorize the Debtors to pay any Bank Fees, including prepetition amounts.

56. The relief requested herein is consistent with relief regularly granted by Courts in this and other districts. *See, e.g., In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (authorizing cash management banks to continue to maintain, service, and administer debtors' bank accounts as accounts of the debtors as debtors in possession on an interim basis); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 17, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (authorizing cash management banks to continue to maintain, service, and administer debtors' bank accounts as accounts of the debtors as debtors in possession on a final basis); *In re Aceto Corp.*, No. 19-13448 (VFP) (Bankr. D.N.J. Feb. 19, 2019) (same); *In re Frank Theatres Bayonne/South Cove, LLC*, No. 18-34808 (Bankr. D.N.J. Dec. 21, 2018) (same).



**VI. Cause Exists to Suspend the Investment and Deposit Guidelines Under Section 345 of the Bankruptcy Code.**

57. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of the money of the estate, such as cash, as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). Although section 345(b) of the Bankruptcy Code generally requires that, with respect to investments other than investments “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” the estate must require a bond in favor of the United States secured by the undertaking of a U.S. Trustee approved corporate surety, the court is permitted to dispense with this undertaking “for cause.” 11 U.S.C. § 345(b).

58. Courts may extend, modify, or waive compliance with section 345 of the Bankruptcy Code and the Guidelines for “cause.” In evaluating whether “cause” exists, courts have considered a number of factors such as:

- a. the sophistication of the debtor’s business;
- b. the size of the debtor’s business operations;
- c. the amount of the investments involved;
- d. the bank ratings (*e.g.*, Moody’s Investor Service, Inc. and Standard & Poor’s Financial Services LLC) of the financial institutions where the debtor in possession funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor’s own business for insuring the safety of the funds;
- g. the debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. the benefit to the debtor;
- i. the harm, if any, to the debtor;



- j. the harm, if any, to the estate; and
- k. the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

*In re Service Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

59. Cause exists to suspend the requirements under section 345(b) of the Bankruptcy Code for a period of thirty (30) days. Both Cash Management Banks, where all of Debtor Bank Accounts are maintained, are Authorized Depositories. However, while the Debtor Bank Accounts held domestically at the Cash Management Banks are FDIC-insured, the Foreign Bank Accounts maintained at BoA's Canadian branches are not. Nevertheless, BoA's Canadian branches are well-capitalized, financially stable, and reputable institutions. Moreover, these chapter 11 cases are large and involve sophisticated Debtors with international operations and the Foreign Bank Accounts are essential to conducting these international operations.

60. Requiring the Debtors to modify their Cash Management System to strictly adhere to the restrictions established by section 345(b) of the Bankruptcy Code will only distract the Company's management, slow the Debtors' momentum, and cause the estates to unnecessarily incur potentially substantial costs to the detriment of creditors. Further, requiring the Debtors to relocate the Foreign Bank Accounts to U.S.-only accounts could have potentially significant tax or regulatory impacts. To avoid disruption to the Debtors' operations, the Debtors submit that waiver of the deposit guidelines to permit the Debtors to maintain all of the Debtor Bank Accounts, including the Foreign Bank Accounts, is in the best interests of the Debtors, their estates, and their creditors. Therefore, the Debtors request that they be permitted to continue to maintain the existing Debtor Bank Accounts consistent with historical practices.



**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

61. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Request of Waiver of Stay**

62. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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



**Reservation of Rights**

64. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be



construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**No Prior Request**

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

**Notice**

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

*[Remainder of page intentionally left blank.]*



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**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 seventeen (17), is

**ORDERED.**



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: 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

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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"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "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

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<sup>2</sup> 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: 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

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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 \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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 DIP



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: 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

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Order (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 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



(Page | 6)

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

Case No. 23-14853 (JKS)

Caption of Order: 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

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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 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)

Caption of Order: 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

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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 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 Interim Order or such longer time as agreed with the U.S. Trustee, without prejudice to seeking an additional extension, 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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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 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 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 (as defined herein) 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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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, 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 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 Debtor Bank



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Accounts. The relief granted in this 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 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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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 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 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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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 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 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 Order and any order approving the Receivables Program.

21. Nothing contained in the Motion or this 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 Interim Order and any actions taken pursuant to such relief, nothing in this 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 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 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 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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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 Interim Order.

24. Notwithstanding anything to the contrary contained in the Motion or this 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* filed substantially contemporaneously herewith (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 Interim Order.

26. Nothing in this 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 Interim Order in accordance with the Motion.

29. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this 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.



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32. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Order.

33. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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

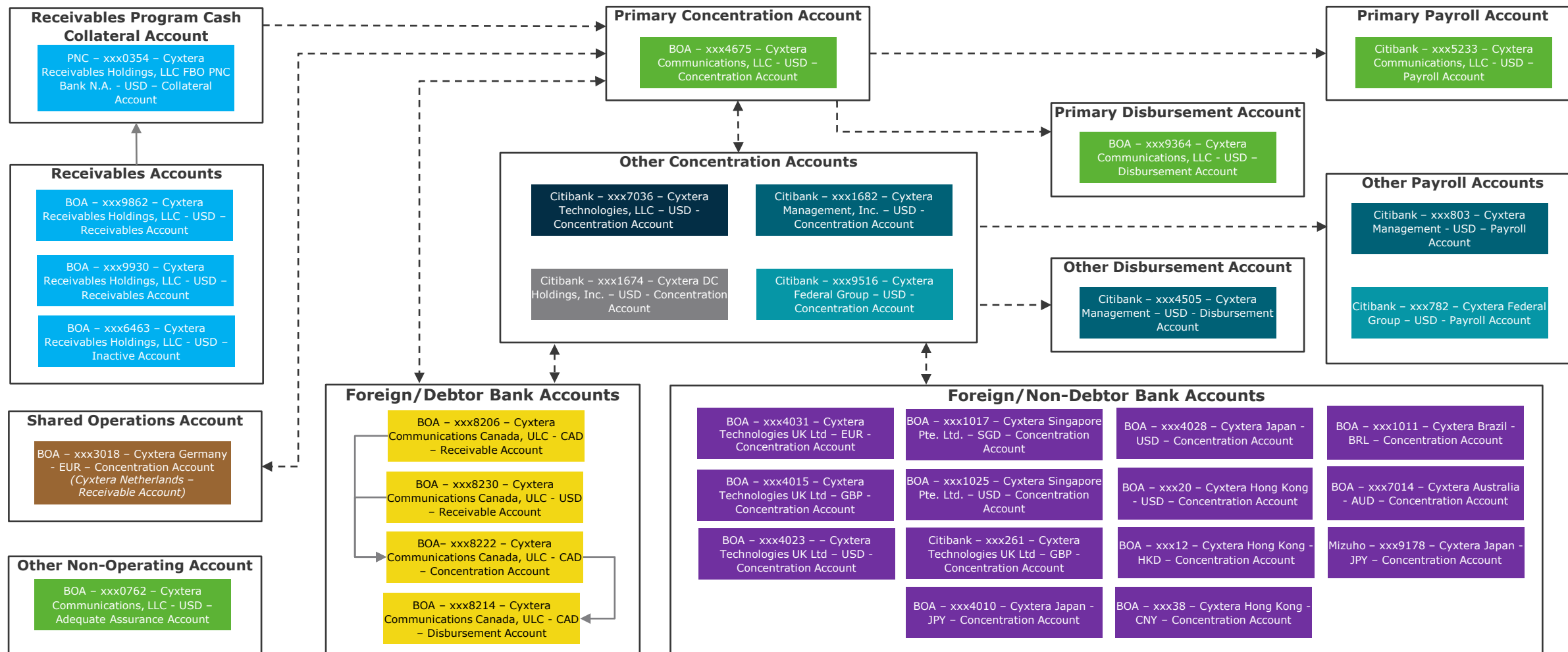


**Exhibit 1**

**Cash Management System Schematic**



# Cyxtera – Illustrative Cash Management Schematic





**Exhibit B**

**Proposed Final Order**



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

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

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**FINAL 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 fifteen (15), is  
**ORDERED.**



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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"),<sup>2</sup> 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 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; 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

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



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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 this 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) continue using the Cash Management System, substantially as identified on Exhibit 1 attached to the Interim Order, 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 DIP Order (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



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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 Final Order, the Debtors will update any electronically produced checks to reflect their status as debtors-in-possession and to include the corresponding bankruptcy number.

3. 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 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 Final Order.

4. 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



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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.

5. 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 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 Final 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.

6. 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



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until a date that is thirty (30) days from the entry of this Final Order or such longer time as agreed with the U.S. Trustee, without prejudice to seeking an additional extension, 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.

7. 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 Final 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.

8. 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 Order. The U.S. Trustee's rights to seek further relief



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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 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

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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 (as defined herein) 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 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.

9. 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



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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, 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 Final 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 Debtor Bank Accounts. The relief granted in this Final 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.”

10. All banks maintaining any of the Debtor Bank Accounts that are provided with notice of this Final 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.

11. 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



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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.

12. 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) 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.

13. 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 Final 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 Final Order.



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14. 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.

15. 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 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 Final Order and any other applicable interim and/or final orders of this Court.

16. 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.

17. 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



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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).

18. 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 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.

19. 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 Order and any order approving the Receivables Program.

20. Nothing contained in the Motion or this Final 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



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security interest or lien or setoff right, in favor of any person or entity, that existed as of the Petition Date.

21. 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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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.

22. 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.

23. 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 (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* filed substantially contemporaneously herewith (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.



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

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24. 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.

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

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

27. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon entry hereof.

28. 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.

29. 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.

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



**Exhibit C**

**Bank Accounts**



No.	Entity	Bank	Location	Description	Account No.	Currency
<i>Debtor Bank Accounts</i>						
1.	Cyxtera Technologies, Inc.	Citibank	USA	Concentration Account	x7036	USD
2.	Cyxtera Communications, LLC	BoA	USA	Concentration Account	x4675	USD
3.	Cyxtera Communications, LLC	BoA	USA	Payroll Account	x5233	USD
4.	Cyxtera Communications, LLC	BoA	USA	Disbursement Account	x9364	USD
5.	Cyxtera Communications, LLC	BoA	USA	Adequate Assurance Account	x0762	USD
6.	Cyxtera Federal Group, Inc.	Citibank	USA	Concentration Account	x9516	USD
7.	Cyxtera Federal Group, Inc.	Citibank	USA	Payroll Account	x782	USD
8.	Cyxtera Management, Inc.	Citibank	USA	Concentration Account	x1682	USD
9.	Cyxtera Management, Inc.	Citibank	USA	Payroll Account	x803	USD
10.	Cyxtera Management, Inc.	Citibank	USA	Disbursement Account	x4505	USD
11.	Cyxtera DC Holdings, Inc.	Citibank	USA	Concentration Account	x1674	USD
12.	Cyxtera Canada Communications, ULC	BoA	Canada	Foreign Bank Account	x8222	CAD
13.	Cyxtera Canada Communications, ULC	BoA	Canada	Foreign Bank Account	x8206	CAD
14.	Cyxtera Canada Communications, ULC	BoA	Canada	Foreign Bank Account	x8230	USD
15.	Cyxtera Canada Communications, ULC	BoA	Canada	Foreign Bank Account	x8214	CAD
<i>Non-Debtor Bank Accounts</i>						
16.	Cyxtera Receivables Holdings, LLC	BoA	USA	Receivables Account	x9862	USD
17.	Cyxtera Receivables Holdings, LLC	BoA	USA	Receivables Account	x9930	USD
18.	Cyxtera Receivables Holdings, LLC	BoA	USA	Inactive Account	x6463	USD
19.	Cyxtera Receivables Holdings, LLC	PNC Bank	USA	Receivables Program Cash Collateral Account	x0354	USD
20.	Cyxtera Singapore Pte. Ltd.	BoA	Singapore	Non-Debtor Foreign Bank Account	x1017	SGD



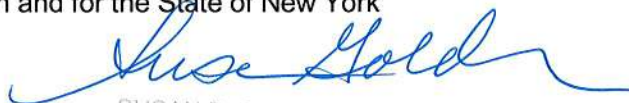
No.	Entity	Bank	Location	Description	Account No.	Currency
21.	Cyxtera Singapore Pte. Ltd.	BoA	Singapore	Non-Debtor Foreign Bank Account	x1025	SGD
22.	Cyxtera Brasil Colocation e Data Center Ltda	BoA	Brazil	Non-Debtor Foreign Bank Account	x01011	BRL
23.	Cyxtera Hong Kong Limited	BoA	Hong Kong	Non-Debtor Foreign Bank Account	x20	USD
24.	Cyxtera Hong Kong Limited	BoA	Hong Kong	Non-Debtor Foreign Bank Account	x12	HKD
25.	Cyxtera Hong Kong Limited	BoA	Hong Kong	Non-Debtor Foreign Bank Account	x38	CNY
26.	Cyxtera Germany GmbH	BoA	Germany	Shared Operations Account	x3018	EUR
27.	Cyxtera Japan, Ltd.	BoA	Japan	Non-Debtor Foreign Bank Account	x9178	JPY
28.	Cyxtera Japan, Ltd.	BoA	Japan	Non-Debtor Foreign Bank Account	x4028	JPY
29.	Cyxtera Japan, Ltd.	Mizuho	Japan	Non-Debtor Foreign Bank Account	x4010	JPY
30.	Cyxtera Australia Pty. Ltd.	BoA	Australia	Non-Debtor Foreign Bank Account	x7014	AUD
31.	Cyxtera Technologies UK Ltd.	BoA	United Kingdom	Non-Debtor Foreign Bank Account	x4031	EUR
32.	Cyxtera Technologies UK Ltd.	BoA	United Kingdom	Non-Debtor Foreign Bank Account	x4015	GBP
33.	Cyxtera Technologies UK Ltd.	BoA	United Kingdom	Non-Debtor Foreign Bank Account	x4023	USD
34.	Cyxtera Technologies UK Ltd.	Citibank	United Kingdom	Non-Debtor Foreign Bank Account	x261	GBP



This is **Exhibit "AA"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2024



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “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 Debtors’ proposed procedures for resolving Adequate Assurance Requests (as defined herein); and (d) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion



requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **The Utility Services**

7. In connection with the operation of their businesses and management of their properties, the Debtors obtain electricity, natural gas, telecommunications, water, waste management (including sewer and trash), internet, and other similar services (collectively, the “Utility Services”) from a number of utility providers or brokers (each, a “Utility Provider” and collectively, the “Utility Providers”). A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors’ various locations and their business operations as of the Petition Date (the “Utility Services List”) is attached hereto as **Exhibit C**.<sup>3</sup>

8. Uninterrupted Utility Services are essential to the Debtors’ ongoing business operations and, hence, the overall success of these chapter 11 cases. The Debtors operate more than sixty data centers to provide space and power for computing hardware and other information technology equipment and services. The Debtors must run their data centers on an uninterrupted and redundant basis, which requires electricity and gas for lighting, heating, and air conditioning as well as other Utility Services. As such, the Utility Services are essential for the Debtors to

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<sup>3</sup> The descriptions of the Utility Services set forth in this Motion constitute a summary only. The actual terms of the Utility Services and related agreements will govern in the event of any inconsistency with the description thereof set forth herein. Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted one or more Utility Providers. By this Motion, the Debtors request relief applicable to all Utility Providers, regardless of whether such Utility Provider is specifically identified on **Exhibit C**. Additionally, the listing of an entity on the Utility Services List is not an admission that such entity is a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.



maintain their business and provide essential functions to operate their data centers throughout the United States. Additionally, the Debtors operate corporate offices, which require electricity, water, waste management, and other Utility Services in order to operate. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, and such disruption would jeopardize the Debtors' ability to successfully operate and manage their reorganization efforts.

9. For some of the Debtors' locations, certain Utility Services are billed directly to the Debtors' landlords and passed through to the Debtors as part of the Debtors' lease payments in accordance with the applicable lease agreements. The relief requested herein is with respect to all Utility Providers supplying Utility Services to the Debtors, including those that indirectly supply services through the applicable landlords.

10. To the best of the Debtors' knowledge, there are no defaults or arrearages with respect to the undisputed invoices for prepetition Utility Services. In the aggregate, the Debtors pay approximately \$13 million each month for Utility Services, generally calculated as the historical average payment for the twelve-month period ending April 30, 2023, or based on the latest invoice if not billed monthly or not received as of April 30, 2023.

#### **I. Proposed Adequate Assurance of Payment.**

11. The Debtors intend to pay postpetition obligations owed to the Utility Providers in the ordinary course of business and in a timely manner. The Debtors' cash generated in the ordinary course of business and access to cash collateral and debtor-in-possession financing is sufficient to pay the Debtors' Utility Services obligations in accordance with their prepetition practice during the pendency of their chapter 11 cases.

12. To provide additional assurance of payment, the Debtors propose to deposit \$5.3 million (the "Adequate Assurance Deposit") into a segregated, interest-bearing account



(the “Adequate Assurance Account”) within 20 days of entry of the Interim Order or the interim order approving the Debtors’ use of cash collateral, whichever is later. The amount of the Adequate Assurance Deposit attributable to a given Utility Provider (such Utility Provider’s “Contribution Amount”) is equal to (i) approximately one-half of the Debtors’ average monthly cost of such Utility Provider’s Utility Services, generally calculated as the historical average payment for the twelve-month period ending April 30, 2023, or based on the latest invoice if not billed monthly or not received as of April 30, 2023, *less* (ii) the amount of any security deposit held by such Utility Provider as of the Petition Date. The Adequate Assurance Deposit is equal to the sum of all Contribution Amounts *plus* an additional \$1 million included out of an abundance of caution to provide assurance to any Utility Provider that may have inadvertently been excluded from the Utility Services List.

13. The Adequate Assurance Deposit will be held at the Adequate Assurance Account at Bank of America for the benefit of the Utility Providers until either (a) the Debtors’ termination of Utility Services from such Utility Providers, at the earliest, if there are no outstanding disputes related to postpetition payments due, or (b) at the conclusion of the chapter 11 case, if not applied earlier, subject to the Debtors’ right to terminate or discontinue the applicable Utility Services. The Adequate Assurance Deposit may be applied to any postpetition defaults in payment to the applicable Utility Providers. No liens senior to the interests of the Utility Providers will encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

14. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors’ cash flow from operations and ability to pay for future Utility Services in accordance with their prepetition practice (collectively, the “Proposed Adequate Assurance”), provides adequate assurance of payment as required by section 366 of the Bankruptcy Code.



## **II. The Adequate Assurance Procedures.**

15. The Debtors request that the Court approve the procedures for requesting different or additional adequate assurance of future payment (each, an “Adequate Assurance Request”) set forth in the proposed Interim Order and Final Order (the “Adequate Assurance Procedures”). Any Utility Provider that is not satisfied with the Proposed Adequate Assurance may make an Adequate Assurance Request pursuant to the Adequate Assurance Procedures.

16. The Adequate Assurance Procedures provide a streamlined process for a Utility Provider to address potential concerns with respect to the Proposed Adequate Assurance, while at the same time allowing the Debtors to continue their business operations uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon certain notice parties. The Debtors, in their discretion, may then resolve any Adequate Assurance Request by mutual agreement with the applicable Utility Provider and without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request. Unless and until a Utility Provider timely files an objection or serves an Adequate Assurance Request, such Utility Provider shall be (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code and (b) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

## **III. Modifications to the Utility Services List.**

17. The Debtors have made an extensive and good-faith effort to identify all Utility Providers and include them on the Utility Services List. To the extent the Debtors identify new or



additional Utility Providers or discontinue services from existing Utility Providers, the Debtors seek authority, in their sole discretion, to amend the Utility Services List to add or remove any Utility Provider. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors will serve such Utility Provider with a copy of the Interim Order or Final Order, as applicable, including the Adequate Assurance Procedures. The Debtors request that the terms of the Interim Order or Final Order, as applicable, and the Adequate Assurance Procedures apply to any subsequently identified Utility Provider. For any Utility Provider that is subsequently removed from the Utility Services List, the Debtors request the authority to decrease the Adequate Assurance Deposit by an amount equal to two weeks of the Debtors' average cost of services from such removed Utility Provider; *provided, however*, that the Debtors shall provide the applicable Utility Provider with seven days' notice thereof and the opportunity to respond to such removal.

#### **Basis for Relief**

18. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the petition date and requires the debtor to provide "adequate assurance" of payment for postpetition services in a form "satisfactory" to the utility company within thirty days of the petition or the utility company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code provides a non-exhaustive list of examples of what constitutes "assurance of payment." 11 U.S.C. § 366(c)(1). Although assurance of payment must be "adequate," it need not constitute an absolute guarantee of the debtors' ability to pay. *See In re Great Atl. & Pac. Tea Co., Inc.*, No. 11-cv-1338, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (finding that "[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full") (citation omitted); *In re Caldor, Inc.—NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires . . . 'adequate



assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*—NY, 117 F.3d 646 (2d Cir. 1997).

19. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to make an informed decision as to whether the Utility Provider will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (“The phrase ‘adequate assurance of payment’ is not defined in the Code. Its meaning depends upon the facts and circumstances of each case . . . .”); *In re Adelphia Bus. Sols., Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002) (“That, the Court believes, is the key to the analysis—to look at the totality of the circumstances to see the extent to which utilities are subjected to unreasonable risk of payment.”). In determining the level of adequate assurance, however, “a bankruptcy court must ‘focus upon the need of the utility for assurance, and . . . require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (emphasis in original) (quoting *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”). Accordingly, demands by a Utility Provider for a guarantee should be refused when the Debtors’ specific circumstances already afford adequate assurance of payment.

20. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet



obligations as they come due in the ordinary course provide assurance that the Debtors' will pay their future obligations to the Utility Providers. Moreover, terminating the Utility Services could render the Debtors' unable to operate their business to the detriment of all stakeholders. *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

21. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “[t]he plain language of § 366 of the Bankruptcy Code allows the Court to adopt the Procedures set forth in the Utility Order”). Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.*

22. Moreover, notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and (c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at \*5–6. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. The Adequate Assurance Procedures, however, avoid a “haphazard and chaotic process whereby each Utility [Provider] could make an extortionate, last-minute demand for adequate assurance



that would force the Debtors to pay under the threat of losing critical [U]tility [S]ervice[s].” *See Id.* at \*5.

23. Because the Adequate Assurance Procedures are reasonable and accord with the purposes of section 366 of the Bankruptcy Code, the Court should grant the relief requested herein. Indeed, similar procedures have been approved by courts in this district. *See, e.g., In re Bed Bath & Beyond*, No. 23-13359 (VFP) (Bankr. D.N.J. May 17, 2023) (approving adequate assurance deposit equal to approximately half of the debtors’ monthly utility expenses on a final basis); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (same); *In re L’Occitane, Inc.*, No. 21-10632 (MBK) (Bankr. D.N.J. Feb. 25, 2021) (same); *In re Modell’s Sporting Goods Inc.*, No. 20-14179 (VFP) (Bankr. D.N.J. Jun. 30, 2020) (approving adequate assurance deposit equal to two weeks of service for each company on a final basis); *In re Hollister Construction Services, LLC.*, No. 19-27439 (MBK) (Bankr. D.N.J. Oct. 9, 2019) (approving adequate assurance deposit equal to one-half of debtor’s monthly utility expenses on a final basis).<sup>4</sup>

24. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.



**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

25. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and consensual use of cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

26. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.



**Request of Waiver of Stay**

27. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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

**Reservation of Rights**

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



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

**No Prior Request**

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

**Notice**

31. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the Utility Providers; and (j) any



party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June, 4 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**INTERIM 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**

The relief set forth on the following pages, numbered three (3) through fourteen (14), is  
**ORDERED.**



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim 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, (d) scheduling a final hearing to consider approval of the Motion on a final basis, and (e) 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 be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at

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<sup>2</sup> 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 an interim basis as set forth herein.

2. The Final Hearing on the Motion will be held on \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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. 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.

4. The following Adequate Assurance Procedures are hereby approved on an interim basis:

- a. Within twenty (20) days of the entry of this 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



(Page | 5)

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

Case No. 23-14853 (JKS)

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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 (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 (if any) appointed in these chapter 11 cases; 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,



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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 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



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

Case No. 23-14853 (JKS)

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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 Interim 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.

1. 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.

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

6. 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.

7. 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.

8. 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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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 shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved. 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 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 Debtor and the Utility Provider may agree.

9. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors shall serve such Utility Provider a copy of this Interim 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 Interim 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.



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

Case No. 23-14853 (JKS)

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10. 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 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.

11. 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.

12. 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 Interim 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



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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.

13. 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 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.

14. 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.

15. 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'



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designation of any particular check or electronic payment request as approved by this Interim Order.

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



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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 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.

17. 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 Interim Order.

18. 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 Interim Order, or as otherwise ordered by the Court.

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

20. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder



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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* filed substantially contemporaneously herewith (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.

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

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

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

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.



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Case No. 23-14853 (JKS)

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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. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

27. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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



**Exhibit B**

**Proposed Final Order**



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

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

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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

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Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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

<sup>1</sup> 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.



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



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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

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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")<sup>2</sup> 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

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<sup>2</sup> 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)

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---

(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), Steven Domanowski (sdomanowski@gibsondunn.com); (v) counsel to the official committee of unsecured creditors (if any) appointed in these chapter 11 cases; 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.; (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 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.



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

Case No. 23-14853 (JKS)

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- 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* (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) that 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 Interim 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.
- m. 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



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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 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



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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 Debtor 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 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



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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 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



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

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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

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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 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' 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



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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

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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.

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



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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

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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 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 *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* filed substantially contemporaneously herewith (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions



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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

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

22. 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.

23. 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.

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



**Exhibit C**

**Utility Services List**



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
6DG	Commodity Quay, St Katharine Docks, London, E1W 1AZ	Telecom	66913	\$200.00
Alectra Utilities	55 John Street North, Markham, ON L8R3M8 Canada	Electricity	1435402575, 3153530000, 4891142205	\$180,600.00
American Electric Power	P.O. Box 371496, Pittsburgh, PA 15250	Electricity	10792668112	\$13,600.00
Arapahoe Co Water & Wastewater Authority	P.O. Box 4640, Carol Stream, IL 60197	Water, Sewer	124485	\$3,200.00
AT&T	P.O. BOX 5076 CAROL STREAM, IL 60197-5076	Telecom	4084921682, 7709411784, 7709449438, 3104141422650, 4084968083222, 9499559081649, 7707396790-002	\$1,100.00
Bay Area Air Quality Management District	375 Beale Street, Suite 600, San Francisco, CA 94105	Utilities		\$3,000.00
bp Energy Retail Company LLC	540 W Madison, 4th Floor, Chicago, IL 60661	Electricity	81054, 81056, 81058, 81060, 81062	\$89,827.00
Burbank Water & Power	164 W. Magnolia Blvd, Burbank, CA 91502	Electricity, Water, Sewer, Waste	505541484	\$122,700.00
Cablevision Lightpath, LLC	1111 Stewart Ave, Bethpage, NY 11714	Telecom		\$2,100.00
Calpine Energy Solutions	401 W. A Street, Suite 500, San Diego, CA 92101	Electricity	537595, 587579, 587581, 587582, 678977, 678978, 678979, 713532, 740603, 740604, 740605, 740606, 740607, 740608	N/A
Calpine Energy Solutions	401 W. A Street, Suite 500, San Diego, CA 92101	Electricity	634432	\$4,700.00
Capcon Networks LLC	500 W 2nd St Ste 1900 Austin, TX 78701	Telecom		\$3,200.00

<sup>1</sup> For the avoidance of doubt, certain Utility Providers currently hold deposits as of the Petition Date.



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
Capitol Waste & Recycling Services	321 Dering Ave., Columbus, OH 43207	Waste		\$100.00
City Of El Segundo	350 Main St., El Segundo, CA 90245	Water, Sewer	22009654000, 22009804000, 23011004000	\$500.00
City Of Fort Worth Water Dept.	P.O. Box 870, Fort Worth, TX 76101	Water, Sewer	894051395360	\$1,700.00
City Of Santa Clara	1500 Warburton Ave, Santa Clara, CA 95050	Electricity, Water, Sewer	0001767807, 0006128605, 0006128707, 0006128907, 0006129107, 0006129307, 0006218906, 0006219106, 0006278407, 0006278507, 0006278606, 0006278807, 0006278907, 0006279006, 0006517905, 0007184602, 0007186602, 0007227304, 0007233605	\$1,075,700.00
City Of Seattle	P.O. Box 35178, Seattle, WA 98124	Electricity	4462330000	\$69,500.00
City Of Seattle	P.O. Box 35178, Seattle, WA 98124	Electricity	2820020000	\$99,200.00
City Of Sunnyvale	P.O. Box 4000, Sunnyvale, CA 94088	Water, Sewer, Waste	10263169830, 10263173954	\$7,600.00
City Of Tempe	P.O. Box 52166, Phoenix, AZ 85072	Water, Sewer, Waste	5782824131	\$500.00
City Of Tukwila	6200 Southcenter Blvd, Tukwila, WA 98188	Sewer	1300210000, 1300220000, 1300240000, 1300250000, 1300270000, 1300290000	\$6,100.00
City of Waltham	610 Main Street, Waltham, MA 02452	Utilities	84 WB IC9915	\$100.00
Cogent	P.O. Box 791087 Baltimore, MD 21279-1087	Telecom		\$2,900.00



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
Comcast Business	PO BOX 71211 Charlotte NC 28272-1211	Telecom	*8495600450799335	\$400.00
ComEd	P.O. Box 6111, Carol Stream, IL 60197	Electricity	0347136056, 0354001148, 2373135054, 3258081116	\$68,800.00
ComEd	P.O. Box 6111, Carol Stream, IL 60197	Electricity	0037056036, 0403056137, 0630041057, 3123001224, 5923046043	\$46,973.00
Constellation Newenergy Gas DV	P.O. Box 5473, Carol Stream, IL 60197	Gas	BG177350	\$15,300.00
Constellation NewEnergy Inc.	1001 Louisiana St., Suite 2300, Houston, TX 77002	Electricity	8154303, 8154304, 8154307, 8154308, 8154309, 8154311, 8713029, 8713030, 8713037, 8713038, 8713039, 8713040, 8713041, 8734527, 8734528	\$227,400.00
Constellation NewEnergy Inc.	1001 Louisiana St., Suite 2300, Houston, TX 77002	Electricity	8279605	\$22,068.00
Constellation NewEnergy Inc.	1001 Louisiana St., Suite 2300, Houston, TX 77002	Electricity	9751357	\$173,272.00
Delaware Co Regional Sewer Dist.	50 Channing Street, Delaware, OH 43015	Sewer	QWE1946	\$200.00
Delco Water Company	6658 Olentangy Road, Delaware, OH 43015	Water	14439602	\$1,100.00
Direct Energy Business	1001 Liberty Avenue, Pittsburgh, PA 15222	Electricity	1696510, 1696511, 1696512, 1696513, 1696514, 1756051, 1756052	\$394,700.00



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
Dominion Energy Virginia	P.O. Box 26543, Richmond, VA 23290	Electricity	0296845225, 0825525942, 1023177056, 1574862015, 2299709515, 2535204560, 8947248533	\$319,500.00
Elk Grove Village	901 Wellington Ave, Elk Grove Village, IL 60007	Water, Sewer	1373700168765	\$1,400.00
Eversource	P.O. Box 56007, Boston, MA 2205	Electricity	26066791042, 26066801015, 26826130051	\$118,600.00
Frontier	P.O. Box 211579 Eagan, MN 55121-2879	Telecom	7405494946, 813372013008231 75 P# 9581	\$400.00
Granite	100 Newport Ave Ext., Quincy, MA 02171	Telecom	8908838, 8908839, 8910482, 04320485, 04447648, 04482155, 04482241, 04483993, 04486762, 04486804, 04486808, 04486946, 04487002, 04487023, 04487175, 04487178, 04487193, 04489246, 04489249, 04489251, 04489255, 04489261, 04489263, 04489264, 04489266, 04489267, 04489272, 04489274, 04489276, 04489284, 04489288,	\$8,400.00



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
			04489289, 04489292, 04489301, 04489302, 04489332, 04489436, 04489446, 04489447, 04489449, 04489452, 04489465, 04489468, 04489470, 04489495, 04489501, 04489512, 04552365, 04579185, 04823781, 04837868, 04842155, 04842159, 04848458, 04851767, 04864895, 08908794, 08908838, 08908839,	
Greystone Power Corp	P.O. Box 6071, Douglasville, GA 30154	Electricity	484383002	\$128,100.00
Highlands Ranch Metro District	62 W. Plaza Dr., Highlands Ranch, CO 80129	Electricity, Water, Sewer	57753, 57755, 87482	\$7,200.00
Highline Water District	23828 30th Ave South, Kent, WA 98032	Water	919000, 919100, 919200, 919300, 919400, 919500, 919600, 919700, 1832600, 1832700	\$4,400.00
Intelipeer	1855 Griffin Road Suite A200 Dania Beach, FL 33004	Telecom		\$2,000.00
Iron Mountain	1 Federal St., Boston, MA 02110	Landlord - Electricity	SAVVIS0001LPH X1A, SAVVIS0001LPH X1B, SAVVIS0001LPH	\$193,600.00



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
			X1C, SAVVIS0001LPH X1D	
Irvine Ranch Water District	15600 Sand Canyon Ave, Irvine, CA 92618	Water	7705232343	\$200.00
Level 3 Communications Canada Co.		Telecom	5-FMQFJWCM	\$1,000.00
Level 3 Communications Japan K.K.		Telecom	5-CQHMHPXB	\$100.00
Level 3 Communications LLC	PO Box 910182, Denver, CO 80291	Telecom	5-FTHQ7K8PF	\$7,100.00
Level 3 Communications Singapore Pte Ltd		Telecom	5-CGGSG0RR	\$400.00
Liander N.V.	Utrechtseweg 68, KVK Arnhem 08021677, 6812 AH Arnhem	Electricity	3008192904	\$18,500.00
Loudoun Water	44865 Loudon Way, Ashburn, VA 20146	Water	200054010, 200054751, 201067389	\$1,100.00
Maandfactuur Elektriciteit Vattenfall Sales Nederland N. V.	Pac 1AF7233, Postbus 41920, 1009 DC Amsterdam	Electricity	50590260	\$11,500.00
National Grid	P.O. Box 371338, Pittsburgh, PA 15250	Electricity	5105228004, 5105812078	\$600.00
Net2Phone	520 Broad St, Newark, NJ 07102	Telecom		\$800.00
Nicor Gas	P.O. Box 2020, Aurora, IL 60507	Gas	24220295307	\$300.00
North Hudson Sewerage Auth.	1600 Adams Street, Hoboken, NJ 7030	Sewer	300146000, 301609000, 301897000	\$8,800.00
PG&E	P.O. Box 997300, Sacramento, CA 95899	Electricity, Gas	0642794673, 5296017056, 7133267806, 8804798801	\$93,600.00
Polaris Realty Canada Ltd	555 West Hasting Street, BC, Canada	Electricity	POLARV684N6	\$20,400.00
PSE&G Co.	P.O. Box 14444, New Brunswick, NJ 8906	Electricity	4200120003, 4200163209, 4200307405,	\$92,700.00



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
			4200608200, 4204507018, 6771945308	
PSE&G Co.	P.O. Box 14444, New Brunswick, NJ 8906	Electricity	4200193302	\$5,132.00
PSE&G Co.	P.O. Box 14444, New Brunswick, NJ 8906	Electricity	4223300504	\$37,028.00
Puget Sound Energy	P.O. Box 91269, Bellevue, WA 98009	Electricity, Gas	220018832463, 220018833107, 220018833115	\$103,200.00
Region Of Peel	10 Peel Centre Dr., Brampton, ON L6T4B9 Canada	Electricity	5360310000, 1384314571, 9543887025	\$2,900.00
Republic Services - Sun Valley, CA	18500 N. Allied Way, Phoenix, AZ 85054	Sewer		\$300.00
Republic Services 183	1600 127th Ave. NE, Bellevue, WA 98005	Sewer	301830091259	\$300.00
Republic Services Of Santa Clara County	1601 Dixon Landing Rd., Milpitas, CA 94546	Sewer		\$4,900.00
Republic Services, Inc. - Atlanta, GA	3045 Donald Lee Hollowell Pkwy, NW, Atlanta, GA 30318	Sewer		\$200.00
Republic Services, Inc. - Gardena, CA	14905 S San Pedro St., Gardena, CA 90248	Sewer		\$300.00
RS Titan LLC	999 N. Sepulveda Blvd, El Segundo, CA 90245	Landlord - Electricity	LWAMHW0101, LWAMHW0102	\$5,600.00
Shakopee Public Utilities Comm.	255 Sarazin Street, Shakopee, MN 55379	Electricity, Water, Sewer	123793001, 123793002	\$93,900.00
Shaw	Ste 900, 630 3rd Ave Sw, Calgary, Alberta, T2P4L4	Telecom	1422077772	\$100.00
SoCalGas	P.O. Box C, Monterey Park, CA 91756	Gas	10559539373, 19310473269	\$400.00
Southern California Edison	P.O. Box 6400, Rancho Cucamonga, CA 91729	Electricity, Gas	8003030340, 8003030519, 8003031077, 8003031558, 700060398914, 700060419122, 700135081032, 700716934219, 1055953937, 15596101665	\$187,400.00
Southern California Gas Co	17836 Gillette Ave, Irvine, CA 92614	Gas	1055953937, 15596000000	\$3,500.00



Utility Provider	Utility Provider Address	Service Provided	Account Number(s)	Proposed Adequate Assurance <sup>1</sup>
Southwest Gas	2200 N. Central, Suite 101, Phoenix, AZ 85004	Gas	910002005292	\$200.00
SRP	P.O. Box, Phoenix, AZ 85062	Electricity	336797006, 782597004, 858807001, 881947002	N/A
Suburban Waste MN, LLC	7125 126th St, Savage, MN 55378	Waste		\$100.00
Symmetry Energy Solutions LLC	9811 Katy Freeway, Suite 1400, Houston TX 77024	Gas	176424	\$400.00
Tampa Electric	P.O. Box 111, Tampa, FL 33601	Electricity	211006238011, 221005757911, 221006380671	N/A
Telus	510 Georgia St W, Vancouver, BC V6B 0M3	Telecom		\$100.00
T-Mobile	1000 Sawgrass Corporate Parkway Suite 400 Sunrise, FL 33323	Telecom	972077836	\$800.00
Veolia Water New Jersey	69 DeVoe Place, Hackensack, NJ 7601	Water	10003522541777, 10004626158002, 10007645605342	\$3,500.00
Verizon	PO Box 660108 Dallas, TX 75266	Telecom	642181147-00001, 642181147-00003	\$1,300.00
Village Of Bensenville	12 South Center Street, Bensenville, IL 60106	Water	168765	\$2,000.00
Washington Gas	6801 Industrial Rd, Springfield, VA 22151	Gas	310002337999, 310002338419, 310002338427, 310002338617, 310002338625	\$500.00
Waste Management Of Virginia, Inc.	1505 Moran Rd., Sterling, VA 20166	Waste		\$1,600.00
Water District No. 20	12606 1st Ave. S., Burien, WA 98168	Water	87930, 87940, 93530	\$400.00
Xcel Energy	P.O. Box 8, Eau Claire, WI 54702	Electricity, Gas	301885914, 302036258, 5300125672278, 5300125672858, 5300125672916	\$145,300.00
			<b>TOTAL</b>	<b>\$4,280,400.00</b>



This is **Exhibit "BB"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



**KIRKLAND & ELLIS 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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**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**

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE

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

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), (a) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims (as defined herein) 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 (as defined herein) 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 (as defined herein) 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 (as defined herein) 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

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



business; and (c) granting related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

### **Jurisdiction and Venue**

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

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

4. The bases for the relief requested herein are sections 105(a), 363, 503, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1 and 9013-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to



third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera's full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

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

#### **I. Critical Vendor Claims.**

##### **A. The Debtors' Process for Identifying Critical Vendors.**

7. To effectuate their business model and ensure the uninterrupted provision of services to their customers, the Debtors rely on goods and services provided by over approximately 750 vendors. As of the Petition Date, the Debtors estimate that they owe approximately \$42.5 million in aggregate outstanding amount to all of their vendors on account of goods delivered and/or services rendered prior to the Petition Date.

8. Recognizing that payment of all prepetition claims of such third-party vendors outside of a plan of reorganization would be extraordinary relief, the Debtors, with the assistance of their advisors, reviewed their books and records, consulted operations management and purchasing personnel, reviewed contracts and supply agreements, and analyzed applicable laws,



regulations, and historical practices. In doing so, the Debtors were able to identify only those vendors that are critical to the continued and uninterrupted operation of the Debtors' business the loss of which could materially harm their business, by, among other things, shrinking their market share, reducing their enterprise value, and ultimately impairing the Debtors' ability to reorganize, to the detriment of the Debtors, their stakeholders, and all of the Debtors' vendors. Specifically, in identifying vendors critical to their business, the Debtors examined each of their vendor relationships with, among other things, the following criteria in mind:

- whether certain specifications or contract requirements directly or indirectly prevent the Debtors from obtaining goods or services from alternative sources;
- whether a vendor is a sole-source, limited-source, or high-volume supplier of goods or services critical to the Debtors' business operations;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which replacement costs (including, pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or to refuse to ship inventory or to provide critical services on a postpetition basis;
- the location and nationality of the vendor;



- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation; and
- whether failure to pay a particular vendor could cause an inability to properly service the Debtors' customers and result in substantial revenue loss.

9. In addition to these factors, the Debtors and their advisors examined the health of each vendor relationship, the vendor's familiarity with the chapter 11 process, and the extent to which each vendor's prepetition claims could be satisfied elsewhere in the chapter 11 process.

**B. Critical Vendor Claims.**

10. As a result of the foregoing review and evaluation, the Debtors have identified, and will continue to identify, a narrow subset of vendors and services that are critical to preserving the value of the Debtors' estates and ensuring a seamless transition into chapter 11 (the "Critical Vendors"). The Debtors' business relies on continuing access to, and relationships with, the Critical Vendors, and, in many instances, the Debtors could not operate their physical infrastructure without access to the goods and services provided by the Critical Vendors. The Critical Vendors are so essential to the Debtors' business that the lack of any of their particular goods or services, even for a short duration, could significantly disrupt the Debtors' operations and cause irreparable harm to the Debtors' businesses, goodwill, and market share.

11. The vendors and suppliers critical to the Debtors' operations generally fall into the following categories:

**1. Data Center Infrastructure and Support Vendors.**

12. To conduct their business, the Debtors rely on the Data Center Infrastructure and Support Vendors to provide, among other things, services that support the core of the Debtors' business—maintaining their properties that house data centers (the "Facilities"). Specifically, the Data Center Infrastructure and Support Vendors are vendors that ensure, once the Facilities are



built and operational, that the Facilities continue to operate smoothly by offering, among other things, critical maintenance, repair, and security services that are essential, often requiring prompt attention to support the Debtors' operations and avoid disruptions to the Debtors' customers. Successfully operating these Facilities to meet the needs of the Debtors' customers on an uninterrupted basis requires, among other things, (i) continued access to uninterruptable power sources and (ii) relationships with a broad range of vendors and service providers from which the Debtors rely on to maintain cooling equipment, fuel system equipment, water treatment equipment, fire suppression systems, and other essential data center equipment and services, including physical security systems, for the Facilities. A loss of any of these vendors could delay any build-out or maintenance of the Debtors' infrastructure, significantly increase their costs, result in service disruptions or otherwise cause them to fail to provide services to their customers on a timely basis, which could result in a breach to certain customer contracts.

13. As of the Petition Date, the Debtors estimate that there is approximately \$4.7 million in aggregate amount outstanding on account of prepetition goods provided and/or services rendered by the Debtors' Data Center Infrastructure and Support Vendors.

## **2. Third Party Colocation Service Providers.**

14. Finally, in the ordinary course of business, the Debtors engage in renting space and obtaining interconnectivity services from various third-party colocation service providers (collectively, the "Third-Party Colocation Service Providers"), which are then sub-leased to the Debtors' customers. The Debtors are party to multiple contracts with Third-Party Colocation Service Providers and failure to fulfill their obligations when due to the Third-Party Colocation Service Provides carries a significant risk of such Third-Party Colocation Service Providers cutting off services, which would cause immediate and direct service disruption to the Debtors' customers.



This would also result in the Debtors' breaching their contracts with customers. Therefore, it is critical for the Debtors' business to make timely payments to the Third-Party Colocation Service Providers in order to prevent any service disruption and preserve the value of their business.

15. As of the Petition Date, the Debtors estimate that there is approximately \$0.8 million in aggregate amount outstanding on account of prepetition goods provided and/or services rendered by the Debtors' Third-Party Colocation Service Providers.

### **3. Business and Administrative Vendors.**

16. The Business and Administrative Vendors play a critical role in providing services that allow the Debtors to continue their day-to-day operations, by offering, among other things, daily administrative services, professional services, and software (including both for customer and internal use) and hardware. For example, the Debtors rely on utility consolidators who aggregate and pay the Debtors' utility bills on the Debtors' behalf and third-party lease administrators to facilitate the payment of rent at the Debtors' Facilities. Services and/or goods provided by these limited number of vendors are crucial to the Debtors successfully operating their business and any failure to pay the Business and Administrative Vendors could result in significant operational disruptions essential to the Debtors' business.

17. As of the Petition Date, the Debtors estimate that there is approximately \$0.8 million in aggregate amount outstanding on account of prepetition goods provided and/or services rendered by the Debtors' Business and Administrative Vendors.

18. Based on the foregoing, the Debtors seek entry of the Interim Order and Final Order granting them authority to make payments, in their sole discretion and business judgment, on account of the prepetition claims held by the Critical Vendors (the "Critical Vendor Claims") in an amount not to exceed \$2.9 million on an interim basis and \$6.4 million on a final basis, which



amounts represent the Debtors' best estimate as to what amounts must be paid to the Critical Vendors to continue an uninterrupted supply of critical goods and services. The Debtors further request that the Court grant the Debtors the authority to allocate the foregoing amounts at their discretion, without prejudice to seek additional relief, and subject to an agreement (within the Debtors' discretion) to receive terms consistent with Customary Trade Terms (as defined herein) from the Critical Vendors.

## **II. Foreign Vendors Claims.**

19. A critical component of the Debtors' supply chain involves transacting with certain foreign vendors (collectively, the "Foreign Vendors"). The Foreign Vendors provide among other things, building, installation, and maintenance services at the Debtors' foreign Facilities. As of the Petition Date, the Debtors estimate that there is approximately \$1.5 million in aggregate amount outstanding on account of prepetition goods provided and/or services rendered by the Debtors' Foreign Vendors (the "Foreign Vendor Claims").

20. Based on the reactions of foreign suppliers in other chapter 11 cases, the Debtors believe there is a significant and material risk that a Foreign Vendor may stop providing services to the Debtors on a timely basis and/or to completely sever its business relationship with the Debtors. Suppliers and vendors located in foreign countries are often unfamiliar with the chapter 11 process and react skeptically to various debtor protections. Short of severing their relations with the Debtors, nonpayment of certain Foreign Vendor Claims may also cause Foreign Vendors to take other harmful actions, including refusing to install, repair, or otherwise maintain systems in the foreign Facilities for the benefit of the Debtors' customers. Providing uninterrupted services for the Debtors' foreign-based customers is critical to the Debtors' businesses and cash flows, and the Debtors can ill afford any delays or interruptions of this nature.



21. In light of the above, the Debtors seek entry of the Interim Order and Final Order granting them authority to make payments, in their sole discretion and business judgment, on account of the Foreign Vendor Claims in an amount not to exceed an aggregate amount of \$1.0 million on an interim basis and \$1.5 million on a final basis, which amounts represent the Debtors' best estimate as to what amounts must be paid to the Foreign Vendors to continue an uninterrupted supply of critical goods and services. The Debtors further request that the Court grant the Debtors the authority to allocate the foregoing amounts at their discretion, without prejudice to seek additional relief, and subject to an agreement (within the Debtors' discretion) to receive terms consistent with Customary Trade Terms (as defined herein) from the Foreign Vendors.

22. In an exercise of their reasonable business judgment, the Debtors have determined that continuing to receive goods and services from the Critical Vendors and the Foreign Vendors is necessary to operate and restructure their businesses as going concerns and to maximize value. If granted discretion to satisfy Critical Vendor Claims and Foreign Vendor Claims as requested herein, the Debtors will assess, on a case-by-case basis, the benefits to their estates of paying the Critical Vendor Claims and the Foreign Vendor Claims and pay any such claim only to the extent their estates will benefit. Without this relief, the Debtors believe that the Critical Vendors and the Foreign Vendors may cease providing equipment to the Debtors and/or stop providing certain critical services and thereby take action that could impede the Debtors' going concern value—a result that could be devastating for the Debtors and their stakeholders.

### **III. 503(b)(9) Claims.**

23. The Debtors may have received goods from various vendors within the twenty day period immediately preceding the Petition Date (collectively, the “503(b)(9) Claimants”), thereby giving rise to prepetition claims of the 503(b)(9) Claimants (the “503(b)(9) Claims”). The Debtors



receive large volumes of construction materials, electrical materials, drywall, switchboards, cabling, and related goods from their vendors on a rolling basis to satisfy their customers' demands.

24. The vast majority of the 503(b)(9) Claimants are also Critical Vendors or Lien Claimants (as defined herein). The Debtors' relationships with these vendors, and with many of the other 503(b)(9) Claimants, are not governed by long-term contracts. Rather, the Debtors obtain goods from such claimants on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders if the Debtors do not pay the 503(b)(9) Claims. Such refusal would negatively affect the Debtors' estates, as the Debtors' business is dependent on the steady flow of equipment essential to install IT systems and support continued operations at the Facilities and related goods and services.

25. The Debtors also believe that certain 503(b)(9) Claimants could demand payment in cash on delivery—further exacerbating the Debtors' liquidity. The Debtors believe that, as of the Petition Date, they owe approximately \$2.8 million on account of goods delivered within the twenty days immediately preceding the Petition Date, approximately \$0.8 million of which may become due within the first twenty-one days of these chapter 11 cases, and the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

26. Accordingly, the Debtors request the authority, but not the direction, to pay the undisputed 503(b)(9) Claims as and when they come due. Importantly, the Debtors do not seek to accelerate or modify existing payment terms with respect to the 503(b)(9) Claims. Rather, the Debtors will pay the 503(b)(9) Claims as they come due in the ordinary course of business, *provided* that such claimants make commercially reasonable efforts to maintain or restore Customary Trade Terms (as defined herein).



#### IV. Lien Claims.

27. The Debtors routinely transact business with a number of third parties who may assert various statutory liens (the “Lien Claimants”), including mechanics’ liens, against the Debtors and their property if the Debtors fail to pay for the services rendered. The Lien Claimants primarily consist of: (a) shipping and warehouse vendors and (b) vendors providing installation and construction services.

28. In the ordinary course of business, the Debtors incur obligations (the “Lien Claims”) to the Lien Claimants for the distribution, receipt, and delivery of the Debtors’ data center equipment and other goods. To maintain their operations and efficiently transport products, the Debtors employ a network that utilizes the services of the Lien Claimants. Under the laws of most states, these servicers or carriers will, in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred in connection with the transportation of goods or the supply of labor.<sup>3</sup>

29. Additionally, in the ordinary course of business, the Debtors build the infrastructure of the Facilities and the essential technology systems hosted at the Facilities. Often the Debtors rely on construction contractors and other labor and materialmen (collectively, the “Materialmen”) to perform a significant portion of the construction, installation, and other capital expenditure work necessary to create the environment and services provided at the Facilities. At any given time, the Materialmen may perform services on, and therefore be in possession of, customer equipment and servers and equipment owned by the Debtors. The Debtors’ failure to satisfy payment obligations,

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<sup>3</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a “carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.” See U.C.C. § 7-307(a) (2005).



if any, to the Materialmen could result in the Materialmen's refusal to return the customers' or Debtors' equipment, thereby disrupting the Debtors' business operations. The Materialmen may also be entitled, under applicable state law, to a lien against the real or personal property that was the subject of such services—whether or not that property still is in the possession or control of such Materialmen—to secure payment of the prepetition amounts owed to such Materialmen.

30. To the extent any Lien Claimant has perfected a lien on any of the Debtors' property or their customers' property or, in the Debtors' estimation, could assert and perfect a lien on any such property, it is imperative that the Debtors be authorized to pay such Lien Claimants, regardless of whether their claims arose prior to or after the Petition Date. Such payment will secure the release of any such lien and the Debtors' continued uninterrupted access to the goods and services provided by the Lien Claimants. Further, if amounts owed to the Lien Claimants are not paid, certain of the Lien Claimants may be able to assert and perfect mechanics or other liens against certain of the Debtors' goods or property, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code.

31. Moreover, the value of the assets in the possession of the Lien Claimants generally exceeds the value of their respective prepetition claims. The refusal of Lien Claimants to deliver or return the Debtors' goods as a result of not being paid would severely disrupt the Debtors' operations and could potentially cost the Debtors a substantial amount of revenue and future business. The Debtors' ability to maintain access to materials, goods, equipment, and installation services is critical to the continued viability of the Debtors' business operations.

32. In light of the above, the Debtors seek entry of the Interim Order and Final Order granting them authority to make payments, in their sole discretion and business judgment, on account of the Lien Claims in an amount not to exceed an aggregate amount of \$7.4 million on an



interim basis and \$21 million on a final basis. Accordingly, by this Motion, the Debtors request authority to pay prepetition outstanding amounts on account of the Lien Claims and continue paying Lien Claims on a postpetition basis in the ordinary course of business.

**V. Customary Trade Terms.**

33. Subject to the Court's approval, the Debtors intend to pay the Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims only to the extent necessary to preserve their business. To that end, in return for paying such claims either in full or in part, the Debtors propose, in their discretion, that they be authorized to require the Critical Vendors, the Foreign Vendors, the 503(b)(9) Claimants, and the Lien Claimants, as applicable, to provide favorable trade terms for the postpetition procurement of goods and services.

34. Specifically, the Debtors seek authorization, but not direction, to condition payment of the Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims upon such claimant's agreement to continue—or recommencement of—supplying such products and services to the Debtors in accordance with trade terms (including credit limits, discounts, pricing, timing of payments, availability, and other terms) consistent with the parties' ordinary course practice or as otherwise agreed by the Debtors in their discretion and reasonable business judgment (the "Customary Trade Terms"). The Debtors reserve the right to require, at their discretion, that the Customary Trade Terms condition to payment be made in writing.

35. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole 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 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.

## **VI. Outstanding Orders.**

36. Prior to the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the “Outstanding Orders”). In the mistaken belief that they would be general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition—potentially disrupting the Debtors’ ongoing business operations and requiring the Debtors to expend substantial time and effort in issuing such substitute orders. As set forth in greater detail below, because the Outstanding Orders are administrative expenses of the Debtors’ estates, the Debtors are requesting that the Court confirm the administrative expense priority of the Outstanding Orders and authorize the Debtors to pay amounts due on account of Outstanding Orders, but only in the ordinary course of business.

### **Basis for Relief**

#### **I. The Court Should Grant the Relief Requested in this Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.**

37. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations, including payments to critical vendors, where necessary to protect and preserve the estate. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts



“have approved . . . ‘critical vendor’ orders that allow payment of essential suppliers’ prepetition invoices”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a bankruptcy court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

38. Pursuant to section 363(b) of the Bankruptcy Code, payment of prepetition obligations may be authorized where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) of the Bankruptcy Code provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

39. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See Just for Feet*, 242 B.R. at 825. Specifically, the Court may use its equitable power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition



obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *Ionosphere Clubs*, 98 B.R. at 176.

40. Indeed, the United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *Just for Feet*, 242 B.R. at 824–25 (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

41. Moreover, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *CoServ*, 273 B.R. at 497. Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The court in *CoServ* specifically noted the pre-plan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate . . .” *Id.*



42. The Debtors have a sound business purpose for the relief requested herein. The authority to honor unpaid, prepetition Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims in the initial days of these chapter 11 cases, without disrupting the Debtors' operations, will maintain the integrity of the Debtors' supply chain, facilitate the Debtors' operation of their Facilities and, in turn, their colocation and interconnection services to customers, and allow the Debtors to efficiently administer these chapter 11 cases.

43. The resulting harm to the Debtors' estates far outweighs the costs associated with paying the Debtors' prepetition obligations to the Critical Vendors, Foreign Vendors, 503(b)(9) Claimants, and Lien Claimants (together, the "Vendors"). Thus, the Debtors' other creditors will be no worse off, and likely fare better, if the Debtors are empowered to negotiate such payments to achieve a smooth transition into chapter 11 with minimal disruption to their operations. As such, the Debtors believe the relief sought in this Motion will not burden the Debtors but will help them maximize the value of their estates. Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims.

## **II. The Court Should Authorize the Payment of the Critical Vendor Claims and the Foreign Vendor Claims.**

44. Allowing the Debtors to pay the Critical Vendor Claims and the Foreign Vendor Claims pursuant to all or some of the above-referenced Bankruptcy Code provisions is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999). Indeed, reflecting the recognition that payment of prepetition claims of certain essential suppliers and vendors is, in fact, both critical to a debtor's ability to



preserve any going-concern value and maximize creditor recovery—thereby increasing prospects for a successful reorganization—courts in this circuit and others regularly grant relief consistent with that which the Debtors are seeking in this Motion. *See, e.g., In re SIO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. April 24, 2023) (authorizing the debtors to pay critical vendor claims); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J Jan. 17, 2023) (authorizing the debtors to pay critical vendor claims); *In re Akron, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 11, 2020) (authorizing the debtors to pay critical vendor claims and foreign vendor claims); *In re Dura Automotive Systems, LLC*, No. 19-12378 (KBO) (Bankr. D. Del. Nov. 19, 2019) (same); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (same).<sup>4</sup>

45. Additionally, if the Debtors do not pay certain of the Foreign Vendor Claims, certain Foreign Vendors may simply refuse to do business with the Debtors unless and until they receive payment on account of their prepetition claims. The Foreign Vendors may take other precipitous action against the Debtors based on the incorrect belief they are not bound by the automatic stay. As a result, the Debtors would be unable to procure necessary services that support the core functions of the Facilities, potentially causing the Debtors to fail or delay providing products and services to their customers. Courts in this circuit and others routinely grant authorization for debtors to pay claims owing to foreign entities against which the automatic stay cannot be enforced readily in the United States and as to which it would be unduly time-consuming and expensive to seek enforcement of an order of the bankruptcy court in the creditor's home country. *See, e.g., In re SIO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. April 24, 2023) (authorizing payment of certain prepetition foreign vendor claims on a final basis); *In re*

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.



*Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. Mar. 30, 2020) (authorizing payment of certain prepetition foreign vendor claims on a final basis); *In re Akorn, INC.*, No. 20-11177 (KBO) (Bankr. D. Del. Jun. 11, 2020) (same); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (same); *In re Dura Automotives Systems, LLC*, No. 19-12378 (KBO) (Bankr. D. Del. Nov. 19, 2019) (same).<sup>5</sup>

46. The Debtors depend on the provision of services by the Critical Vendors and the Foreign Vendors. Ensuring these Critical Vendors and Foreign Vendors continue to provide services is therefore vital to the success of these chapter 11 cases and the ability of the Debtors to maximize any going-concern value. Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Critical Vendor Claims and Foreign Vendor Claims.

### **III. The Court Should Authorize the Payment of Claims Entitled to Priority Pursuant to Section 503(b)(9) of the Bankruptcy Code.**

47. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan. Moreover, the timing of such payments lies squarely within the Court’s discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left

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<sup>5</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.



to the discretion of the Court”). The Debtors’ ongoing ability to obtain goods as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the goods necessary to maintain the Debtors’ operations and maximize the value of the Debtors’ estates.

48. Moreover, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. As administrative claims incurred in the ordinary course of business, the Debtors believe they may pay such claims in accordance with their reasonable business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g.*, Transcript of Hearing held on October 31, 2006, at 49, *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Nov. 6, 2006) (“THE COURT: I think arguably the debtor could pay its 503(b)(9) claimants without court approval.”). Again, the timing of such payments lies squarely within the Court’s discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at \*3.

49. For these reasons, courts have regularly authorized the payment of claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business. *See, e.g., In re SIO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. April 24, 2023) (authorizing payment to parties with section 503(b)(9) claims on a final basis); *In re Alex and Ani, LLC*, No. 21-10918 (CTG) (Bankr. D. Del. June 11, 2021) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 11, 2020) (same); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. Mar. 30, 2020) (same); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct.



28, 2019) (same).<sup>6</sup> Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the 503(b)(9) Claims.

#### **IV. The Court Should Authorize the Payment of Lien Claims.**

50. Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.<sup>7</sup> 11 U.S.C. § 362(b)(3). As a result, the Debtors anticipate that certain Lien Claimants may assert or perfect liens, refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent that certain Lien Claimants have possession of the Debtors' inventory, mere possession or retention would disrupt the Debtors' operations.

51. Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of a valid possessory lien to the extent that the Debtors use or sell the estate property against which a Lien Claim is asserted. Given that the value of such property will generally far exceed the value of the related Lien Claim, creditors will not be harmed—and, in fact, will be benefited—by the satisfaction of certain amounts owed to the Lien Claimants. Those payments will facilitate the use and/or sale of estate property against which

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

<sup>7</sup> See 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.").



liens may otherwise be asserted, helping to preserve the going-concern value of the Debtors' business and enabling the Debtors to smoothly transition into chapter 11.

52. For these reasons, courts in this jurisdiction and others have authorized the payment of prepetition lien claims under similar circumstances in recent chapter 11 cases. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. April 25, 2023) (authorizing the debtors to pay certain prepetition secured claims of critical lien claimants on an interim basis); *In re SIO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. April 24, 2023) (authorizing payment of certain lienholder claims on a final basis); *In re David's Bridal LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. April 17, 2023) (authorizing the debtors to pay lien claimants on an interim basis); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (authorizing the debtors to pay lien claimants on a final basis); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same).<sup>8</sup> Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Lien Claims.

**V. The Court Should Confirm that Outstanding Orders Are Administrative Expense Priority Claims and that Payment of Such Claims is Authorized.**

53. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the "actual [and] necessary costs and expenses of preserving the estate" are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, granting the relief sought herein with respect to the

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<sup>8</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.



Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief requested herein were not granted and will not prejudice any other party in interest.

54. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority. The attendant disruption and delay to the continuous and timely flow of critical materials and other goods to the Debtors would force the Debtors to potentially halt operations and production, disrupt the Debtors' business, and lead to a loss of revenue, all to the detriment of the Debtors and their creditors.

55. Indeed, courts in this circuit and others have routinely granted the type of relief requested herein. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. April 25, 2023) (granting administrative expense priority to undisputed obligations on account of outstanding orders on an interim basis); *In re SIO2 Medical Products, Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. April 24, 2023) (granting administrative expense priority to undisputed obligations on account of outstanding orders on a final basis); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sep. 22, 2022) (same); *In re Highpoint Resources Corp.*, No. 21-10565 (CSS) (Bankr. D. Del. Mar. 26, 2021) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 11, 2020) (same).<sup>9</sup> Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

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<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.



**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

56. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders and is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Request of Waiver of Stay**

57. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.



**Waiver of Memorandum of Law**

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

**Reservation of Rights**

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



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

**No Prior Request**

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

**Notice**

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



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 5, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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<sup>1</sup> 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.



**INTERIM 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**

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The relief set forth on the following pages, numbered three (3) through eleven (11), is  
**ORDERED.**



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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Upon the *Motion of Debtors 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”),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim 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, and (d) scheduling a hearing to consider approval of the Motion on a final basis; 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

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<sup>2</sup> 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: Interim 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

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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 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 **[●], 2023 at 2:00 p.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 **[●], 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, but not directed, in consultation with the Ad Hoc First Lien Group 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 \$2.9 million on an interim basis (ii) the Foreign Vendors Claims in an aggregate amount not to exceed \$1.0 million on an interim basis; (iii) the 503(b)(9) Claims in an aggregate amount not to exceed \$0.8 million on an interim basis; and (iv) the Lien Claims in



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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an aggregate amount not to exceed \$7.4 million on an interim basis, absent further order of the Court.

4. 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.

5. 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.

6. 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.

7. 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 outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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.

8. 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 Interim Order shall be deemed to (a) agree to the terms and provisions of this Interim 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 Interim Order, the Debtors shall provide such Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant with a copy of this Interim Order (unless previously provided to such Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant).

9. 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 Interim Order are valid, and the Debtors expressly 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.



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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10. Notwithstanding the foregoing, prior to entry of an order granting the relief requested in the Motion on a final basis, the Debtors are not authorized to pay any prepetition amounts on account of Critical Vendors Claims, Foreign Vendor Claims, 503(b)(9) Claims, or Lien Claims before the applicable due dates of such claims.

11. Notwithstanding anything to the contrary contained in the Motion or this 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 *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* filed substantially contemporaneously herewith (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.

12. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this 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 Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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 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 Interim 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.

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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owed in connection with the relief granted herein and to the extent authorized by this Interim Order.

14. 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 Interim Order.

15. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Interim 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 any statutory committee appointed in these chapter 11 cases every thirty (30) days beginning upon entry of this Interim Order.

16. 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 Interim 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 the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors,



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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the Debtors shall, to the extent reasonably practical, provide three (3) business days' advance notice to, and opportunity to object by, the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; provided that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.

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

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

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

20. 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.

21. 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.

22. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

23. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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



**Exhibit B**

**Proposed Final Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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<sup>1</sup> 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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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

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**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**

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



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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

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Upon the *Motion of Debtors 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”)<sup>2</sup>. 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

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<sup>2</sup> 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; 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 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.
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;



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

Case No. 23-14853 (JKS)

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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 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



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

Case No. 23-14853 (JKS)

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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 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



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

Case No. 23-14853 (JKS)

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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* filed substantially contemporaneously herewith (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 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,



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

Case No. 23-14853 (JKS)

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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 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



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

Case No. 23-14853 (JKS)

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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 any statutory committee appointed in these chapter 11 cases 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 the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall, to the extent reasonably practical, provide three (3) business days' advance notice to, and opportunity to object by, the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; 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



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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.



This is **Exhibit "CC"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**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**

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), (i) authorizing, but not directing, the Debtors to (a) maintain and administer their Customer and Partner Programs (as defined herein) and (b) honor certain prepetition obligations related thereto, and (ii) granting related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court,

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 363(b), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (“Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy



Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **The Customer and Partner Programs**<sup>3</sup>

7. The Debtors serve more than 2,000 customers, including industry leading enterprises, service providers, and government agencies. The Debtors sell their products and services directly to end-user customers (“End-Users”), which include, among other things, technical support and installation services for the products purchased by End-Users, as well as project-based deployment, design, and optimization services. The Debtors sell these services directly to customers using Cyxtera-employed salespersons and sales agents who offer certain promotions and special incentives (the “Direct-to-End-User Customer Programs”).

8. Through their global network partner program (the “Cyxtera Global Network Partner Program” and, together with the Direct-to-End-User Customer Programs, the “Customer and Partner Programs”), the Debtors also sell their products and services indirectly to End-Users through a channel-led sales model that leverages third-party partners located around the world to engage in referrals (the “Referral Partners”), resales (the “Resale Partners”), or strategic alliances (the “Alliance and Ecosystem Partners” and, together with the Referral Partners and Resale Partners, the “Channel Partners”) with respect to the Debtors’ products and services. Within the Cyxtera Global Network Partner Program, the Debtors offer three different types of programs:

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<sup>3</sup> Although the description of the Customer and Partner Programs set forth in this Motion is intended to be comprehensive, the Debtors may have inadvertently omitted some of the Customer and Partner Programs. The Debtors request relief with regard to all Customer and Partner Programs, regardless of whether any individual Customer and Partner Program is specifically identified herein.



(i) the Cyxtera Referral Partner Program; (ii) the Solution Provider and Reseller Program; and (iii) the Cyxtera Ecosystem Partner Program (each as defined herein). On average, direct sales to End-Users make up approximately 75 percent of the Debtors' total bookings and the indirect sales and promotions via Channel Partners make up approximately 25 percent of their total bookings.

9. In the ordinary course, the Debtors have provided the Customer and Partner Programs in the interest of promoting and maintaining customer and partner business and loyalty. As the Debtors operate in a competitive market with increasing pressure and quickly evolving technology, it is important for the Debtors to have positive customer relationships and to maintain a reputation for reliability to ensure that the Debtors' End-Users and Channel Partners continue to purchase, use, and promote the Debtors' products and services. In addition, it is important for the Debtors to be creative in their sales practices, as well as accommodating to their End-Users and Channel Partners (*i.e.*, with respect to Promotions (as defined herein) and the like) so as to attract new business and drive growth.

10. The Debtors believe that their ability to continue the Customer and Partner Programs and to honor any obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, meet competitive market pressures, and ensure customer satisfaction. Continuing the Customer and Partner Programs allows the Debtors to maintain the goodwill of their current customers and partners, attract new customers and partners, and, ultimately, to enhance the Debtors' revenue and profitability.

11. Accordingly, the Debtors seek authorization to continue administering the Customer and Partner Programs and to honor prepetition obligations thereunder in the ordinary course of business as the Customer and Partner Programs are critical to the Debtors' ongoing



operations in these chapter 11 cases and will maximize the value of the estates for the benefit of all of the Debtors' stakeholders.

**I. Direct-to-End-User Customer Programs.**

**A. Promotions.**

12. To solicit and retain business, the Debtors provide, in the ordinary course of business, certain incremental upfront discounts and service credits on certain designated Cyxtera products and services (the "Promotions") directly to certain End-Users, including both prepackaged and ad hoc Promotions. With Direct to End-Users making up approximately 75 percent of Cyxtera's total bookings, the Promotions serve as a key revenue driver by enabling the Debtors to retain and grow business and maintain goodwill with their critical End-User customer base.

13. As of the Petition Date, the Debtors estimate that there are no payments outstanding related to Direct-to-End-User Customer Programs. However, the charges for some of the Promotions, such as offering free months of products or services, are applied as a bill credit and certain amounts earned under the Promotions are applied only as a discount to future bills. Accordingly, there may be credits owed to End-Users as of the Petition Date that have not yet been applied to customer accounts. Accordingly, the Debtors seek authority to honor any such prepetition credits incurred on account of the Promotions and to continue offering Promotions and honoring any amounts incurred related thereto in the ordinary course of business on a postpetition basis.

**B. Service Adjustments.**

14. As a special incentive for End-Users and only upon request, the Debtors offer certain adjustments to End-User billing (the "Service Adjustments") to address billing corrections,



billing errors, and service quality issues. Typically, the Service Adjustments are offered in the form of a billing credit of up to one month of an End-User's monthly recurring payment.

15. Certain Service Adjustments offered prior to the Petition Date may not have been applied to the applicable End-Users' accounts. The Debtors seek authority to honor such Service Adjustments for active End-Users as of the Petition Date without regard to when they arose and to continue offering Service Adjustments, in their business judgement in the ordinary course of business on a postpetition basis.

## **II. Cyxtera Global Partner Program.**

16. As discussed above, the Debtors offer four main programs within the Cyxtera Global Partner Program that are designed to connect customers to the Debtors' expansive ecosystems, generate profitable new revenue, build a robust network of Channel Partners, and maintain relationships between the Debtors and their Channel Partners, who are not contractually obligated to partner exclusively with the Debtors. The Debtors believe that, given their revenue model and the importance of their Channel Partners, maintaining the Cyxtera Global Partner Program is essential to the continued health and sustainability of the Debtors' business.

### **A. Cyxtera Referral Partner Program.**

17. The Debtors offer a referral-based program whereby the Debtors' Referral Partners are eligible to receive commissions on every customer opportunity they refer that enters into a contract with the Debtors for their products and services (the "Cyxtera Referral Partner Program"). The Referral Partners are generally comprised of brokers, referral agents, and influencers. Brokers are eligible to receive a percentage commission fee on new and subsequent customer contracts. Such broker commission fees are paid as a one-time obligation with no future obligations. In addition, referral agents who generate new business, customer expansions, or renewals, in each case after proper registration and acceptance by the Debtors, are eligible to receive monthly



commission payments upon collection of customer invoices. The commission rates vary based on the program level assigned to the referral agent subject to the volume of customer contracts such agent successfully refers. Monthly commissions are based on a percentage of monthly recurring revenue of a customer contract. Influencers who refer new business are eligible to receive upfront payments based on monthly recurring revenue of a new customer contract with no future payment obligations on behalf of the Debtors.

18. On average, the Debtors incur approximately \$15 million per year in commission expenses paid to Referral Partners. As of the Petition Date, the Debtors estimate they owe approximately \$2.5 million in prepetition commissions outstanding related to the Cyxtera Referral Partner Program. The Debtors request authorization to pay all outstanding prepetition and postpetition amounts incurred on account of the Cyxtera Referral Partner Program and to continue the Cyxtera Referral Partner Program in the ordinary course of business on a postpetition basis consistent with past practice.

**B. Solution Provider and Reseller Program.**

19. The Debtors offer their products and services to Resale Partners, who then resell the Debtors' products to End-Users (the "Solution Provider and Reseller Program"). As part of the Solution Provider and Reseller Program, the Debtors offer Resale Partners incremental upfront discounts on certain designated product and service lines within the Cyxtera portfolio. The Resale Partners, in turn, market, distribute, and resell the Debtors' products and services to End-Users. Resale Partners then remit payments at the discounted rate generated under the contracts they enter into with End-Users back to the Debtors. The Resale Partners who participate in this program include: (i) value added resellers, who are able to add features and services to an existing product by integrating the Debtors' colocation and interconnection capabilities and then reselling a "turn key" solution to End-Users; (ii) managed service providers, who are able to expand their offerings



and increase value to End-Users by deploying end-to-end solutions in the Debtors' data centers; and (iii) network service providers and systems integrators, who are the architects of the solutions surrounding hardware and application variables.

20. The Debtors also have a resale program specific to resellers of the Debtors' products and services to federal agencies (the "Federal Reseller Partner Program"). Resale Partners specific to the Federal Reseller Partner Program include distributors and aggregators, who help agencies deliver optimal business-oriented solutions to the government customer. Because of the nature of the Solution Provider and Reseller Program and the Federal Reseller Partner Program, the Debtors do not have any outstanding liabilities owed to Resale Partners. However, it is critical that the Debtors maintain their relationships and goodwill with the Resale Partners to maintain and drive sales and to not impair the Debtors' supply chain. Therefore, the Debtors request authorization to continue the Solution Provider and Reseller Program and the Federal Reseller Partner Program in the ordinary course of business, including offering discounted products and services to Resale Partners, on a postpetition basis consistent with past practice.

**C. Cyxtera Ecosystem Partner Program.**

21. The Debtors also host a marketplace (the "Cyxtera Data Center Ecosystem") for Alliance and Ecosystem Partners, including computer, storage, networking, security, and other technology or service providers to market and sell their own products and services to the Debtors' over 2,000 End-Users (the "Cyxtera Ecosystem Partner Program"). Through the Cyxtera Ecosystem Partner Program, the Debtors and their Alliance and Ecosystem Partners attract new and existing customers by facilitating the Cyxtera Data Ecosystem to assist their End-Users in solving for their digital, cloud, and colocation needs. Through promoting the benefits of multiple Alliance and Ecosystem Partners' products and services available in the Cyxtera Data Center Ecosystem to their End-Users, the Debtors have created a centralized marketplace for their



End-Users to achieve all their current and future information technology needs. Additionally, by hosting the Cyxtera Ecosystem Partner Program, the Debtors incentivize their Alliance and Ecosystem Partners, who are not contractually obligated to partner exclusively with the Debtors, to continue the partnership by connecting such partners to a rich ecosystem of providers and services of other End-Users. There is no financial obligation on the Debtors' part to facilitate this program. However, out of an abundance of caution, the Debtors request authorization to continue the Cyxtera Ecosystem Partner Program in the ordinary course of business on a postpetition basis consistent with past practice.

**D. Market Development Funds Program.**

22. The Debtors also, from time to time, offer funds to their Channel Partners for various market-development and customer-engagement opportunities to build demand between their Channel Partners, Cyxtera, and End-Users (collectively, the "Market Development Funds Program"). Typically, in connection with a given marketing campaign, the Debtors reimburse their Channel Partners a fixed predetermined amount to cover expenses incurred through the marketing of products and services. In other instances, the Debtors may pay their Channel Partners or supplier in advance, depending on the marketing service. As these funds are approved in advance by the Debtors' Chief Revenue Officer and Chief Development Officer, the Debtors are not contractually obligated to participate in the Market Development Funds Program, however, this program remains a key source of sales and End-User generation for the Debtors. Marketing services include, among other things, lead generation, corporate communications, brand marketing, website marketing and advertisement, and promotional events.

23. As of the Petition Date, the Debtors do not currently have any active funds pursuant to the Market Development Funds Program. Accordingly, the Debtors estimate that there are no outstanding prepetition obligations on account of the Market Development Funds Program.



However, the Debtors request authorization to continue the Market Development Funds Program and honor any amounts incurred thereunder in the ordinary course of business on a postpetition basis consistent with past practice.

### **Basis for Relief**

#### **I. Continuing to Honor the Customer and Partner Programs in the Ordinary Course Is Warranted Under Sections 105(a), 363(b), and 1108 of the Bankruptcy Code.**

24. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., Miltenberger v. Logansport C. & S.W.R. Co.*, 106 U.S. 286, 311 (1882) (“Many circumstances may exist which may make it necessary and indispensable to the business . . . and the preservation of the property, for the receiver to pay pre-existing debts.”); *In re Lehigh & N. Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (finding payment of prepetition obligations appropriate where (i) such payment “is essential to the continued operation of the [business] during reorganization” and (ii) there exists a “possibility that the creditor will employ an immediate economic sanction, failing such payment.”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–26 (D. Del. 1999) (acknowledging section 105(a) as a standalone statutory basis for the payment of prepetition obligations and synthesizing Third Circuit law into the general rule that payment of such prepetition obligations is appropriate where failure to pay places the business in serious jeopardy). Courts acknowledge several legal theories rooted in the Bankruptcy Code that support the payment of prepetition obligations. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (acknowledging sections 105(a) and 1107(a) of the Bankruptcy Code as statutory bases for paying prepetition obligations).

25. Section 1107(a) of the Bankruptcy Code (i) grants a debtor in possession the “rights . . . and powers . . . of a trustee” and (ii) mandates a debtor in possession to perform “all



the functions and duties . . . of a trustee.” 11 U.S.C. § 1107(a). In turn, section 1108 of the Bankruptcy Code authorizes a debtor in possession to “operate the debtor’s business.” 11 U.S.C. § 1108.

26. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

27. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet*, 242 B.R. at 825–26.



Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & N. Eng. Ry Co.*, 657 F.2d at 581 (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

28. Accordingly, the Court has authority to authorize the Debtors to continue the Customer and Partner Programs, and pay prepetition claims arising thereunder, pursuant to sections 105(a), 363(b), and 1108 of the Bankruptcy Code. Continuing to administer the Customer and Partner Programs without interruption during the pendency of these chapter 11 cases is critical to preserve the value of the Debtors’ assets by, most importantly, preserving customer goodwill and market share, which will benefit from continuing the Customer Programs. This value will inure to the benefit of the Debtors’ estates and their creditors.

29. Failure to honor the Customer and Partner Programs could place the Debtors at a competitive disadvantage in the marketplace, amplifying the negative effect of any customer uncertainty that may arise from these chapter 11 cases. Such uncertainty could erode the Debtors’



hard-earned reputation and brand loyalty, which could adversely impact their prospects for a successful emergence from bankruptcy. Maintaining the Customer and Partner Programs and the corresponding relationships will ensure a smooth transition immediately following the filing of these chapter 11 cases. Accordingly, the Debtors submit that they have shown sufficient cause to warrant the authority to honor the Customer and Partner Programs and to honor any customer and partner obligations relating thereto.

30. Where retaining the loyalty and patronage of customers is critical to successful chapter 11 cases, courts in this district and others have granted relief similar to that requested here. *See, e.g., In re David's Bridal, LLC, et al.*, No. 23-13131 (Bankr. D.N.J. May 18, 2023) (CMG) (authorizing the debtors to administer any customer programs that were in effect prepetition and honor any prepetition obligations related thereto); *In re L'Occitane, Inc.*, No. 21-10632 (Bankr. D.N.J. Feb. 2, 2021) (MBK) (same); *In re SLT Holdco, Inc., et al.* Case No. 20-18368 (Bankr. D.N.J. July 29, 2020) (MBK) (same); *In re RTW Retailwinds, Inc.*, No. 20-18445 (Bankr. D.N.J. July 15, 2020) (JKS) (same); *In re Modell's Sporting Goods, Inc., et al.*, Case No. 20-14179 (Bankr. D.N.J. June 23, 2020) (VFP) (same).<sup>4</sup>

## **II. Continuing the Customer and Partner Programs and Honoring the Customer Obligations is in the Best Interests of the Debtors' Businesses and Their Estates.**

31. Continuing to administer the Customer and Partner Programs without interruption during the pendency of these chapter 11 cases will help to preserve the Debtors' valuable customer and partner relationships and goodwill, and to maintain business and drive additional business, which will inure to the benefit of all of the Debtors' stakeholders and their estates. If the Debtors are unable to continue the Customer and Partner Programs postpetition or pay amounts due and

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request made to the Debtors' proposed counsel.



fulfill obligations owing on account of the Customer and Partner Programs, the Debtors risk alienating certain partners and customer constituencies (who might then initiate business relationships with the Debtors' competitors) and suffer corresponding losses in customer acquisitions and loyalty that will harm the Debtors' prospects for reorganization or otherwise damage the value of the estates. Importantly, the Debtors' competitors maintain programs similar to the Customer and Partner Programs, meaning that customers have a ready audience willing to meet their needs and take business away from the Debtors at this crucial time.

32. Accordingly, the Debtors submit that they have shown cause sufficient to warrant the authority to honor the Customer and Partner Programs and to honor any customer obligations relating thereto, and respectfully request that the relief sought herein be approved on the terms set forth in the proposed Interim and Final Orders.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

33. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Continuing to administer the Customer and Partner Programs is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.



**Request of Waiver of Stay**

34. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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

**Reservation of Rights**

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



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

#### **No Prior Request**

37. No prior request for the relief sought in this motion has been made to this or any other court.

#### **Notice**

38. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) Mayer Brown LLP, as counsel



to PNC Bank, N.A.; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.



WHEREFORE, the Debtors respectfully request entry of the interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



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

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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Upon the *Debtors' Motion for Entry of Interim and Finals 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"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim 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 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

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<sup>2</sup> 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: Interim 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

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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 \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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, 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 any appointed statutory committee within five (5) days.

4. 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'



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Case No. 23-14853 (JKS)

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designation of any particular check or electronic payment request as approved by this Interim Order.

5. Notwithstanding anything to the contrary contained in the Motion or this 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 *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* filed substantially contemporaneously herewith (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.

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



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

Case No. 23-14853 (JKS)

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specified or defined in this 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 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.

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 Interim Order.



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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 Interim Order.

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

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

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim 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. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Order.



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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15. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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



**Exhibit B**

**Proposed Final Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**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**

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



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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

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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"),<sup>2</sup> 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

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<sup>2</sup> 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

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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 any appointed statutory committee 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. Nothing in the Motion or this Final Order waives or modifies the requirements of the RSA, including, without limitation, the consent and consultation rights contained therein.
5. 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



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

Case No. 23-14853 (JKS)

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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 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.

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 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)

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(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.

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

10. 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 and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

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11. 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.

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.



This is **Exhibit "DD"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2024



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion (the "Motion"):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and "Final Order"), (a) authorizing the Debtors to (i) pay all prepetition wages, salaries, Commissions, other compensation, and Reimbursable Expenses on account of the Compensation and Benefits (each as defined herein) and (ii) continue to administer the Compensation and Benefits in the ordinary course of business, including payment of prepetition obligations related thereto, and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately twenty-eight days after the commencement of these chapter 11 cases to consider entry of the Final Order.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, 9013-1, and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.



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

### **The Debtors’ Workforce**

7. As of the Petition Date, Cyxtera employs approximately 657 employees, of which 582 are employed by the Debtors (the “Employees”) and nearly all of whom are full-time. Approximately 563 of the Debtors’ Employees work in the United States (the “U.S. Employees”) and approximately 19 work outside the United States (the “Non-U.S. Employees”).<sup>3</sup> The Employees include personnel who are intimately familiar with the Debtors’ business, processes, and systems, and possess unique skills and experience with respect to the Debtors’ core business segments. As a global data center provider, technically skilled employees are imperative to the Debtors’ business operations. Without the continued, uninterrupted services of the Employees, the Debtors’ business operations will come to a halt, materially impairing the administration of the Debtors’ estates. In addition to the Employees, the Debtors’ workforce also includes approximately three independent contractors (the “Independent Contractors”), who perform necessary accounting and finance services for the Debtors.

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<sup>3</sup> For the avoidance of doubt, the relief sought under this Motion relates only to payments made to individuals who are employed by the Debtors.



8. The vast majority of the Employees and Independent Contractors rely on their compensation and benefits to pay their daily living expenses. These workers will be unfairly harmed if the Debtors are not permitted to continue paying compensation and providing health insurance and other benefits during these chapter 11 cases. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

**Compensation and Benefits**

9. To minimize the personal hardship that Employees and Independent Contractors could suffer if prepetition obligations related thereto remain unpaid during these chapter 11 cases, the Debtors seek authority, but not direction, to: (a) pay and honor certain prepetition claims relating to, among other things, Wage Obligations, Withholding Obligations, Reimbursable Expenses, Health and Welfare Coverage and Benefits, the Workers' Compensation Program, the 401(k) Plan (including the 401(k) Matching Contributions) and other retiree benefits, the Foreign Retirement Plans, Paid Leave Benefits, the Non-Insider Severance Program, the Non-Insider Retention Bonus Program, Non-Insider Severance Benefits, Additional Benefits Programs, the Non-Employee Director Compensation, and certain other benefits that the Debtors have provided in the ordinary course (each as defined herein, and collectively, the "Compensation and Benefits")<sup>4</sup> and (b) pay all costs related to or on account of the Compensation and Benefits.

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<sup>4</sup> The descriptions of the Compensation and Benefits set forth in this Motion constitute a summary only. The actual terms of the agreements, contracts, plans, programs, and manuals governing the Compensation and Benefits will govern in the event of any inconsistency with the description in this Motion. The Debtors request authority to honor obligations related to Compensation and Benefits in the ordinary course of business consistent with prepetition practices, regardless of whether the Debtors inadvertently failed to include a particular benefit or aspect of compensation in the defined term "Compensation and Benefits," and any such omitted benefit or aspect of compensation is hereby included in the defined term "Compensation and Benefits" as used herein and in the Interim Order and Final Order.



10. Subject to the Court's approval, the Debtors intend to continue their prepetition Compensation and Benefits in the ordinary course of business. Out of an abundance of caution, the Debtors request confirmation of their right to modify, change, and/or discontinue any of their Compensation and Benefits and/or to implement new programs, policies, and benefits in the Debtors' sole discretion and in the ordinary course during these chapter 11 cases without the need for further Court approval, subject to applicable law.

**I. Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses.**

**A. Wage Obligations.**

11. In the ordinary course of business, the Debtors have incurred obligations to their Employees for Employee Compensation, Independent Contractor Obligations, Commissions, and Transitioned Employee Compensation (each as defined below and collectively, the "Wage Obligations"). As of the Petition Date, the Debtors estimate that they owe approximately \$7.406 million on account of accrued but unpaid Wage Obligations. The authority to pay Wage Obligations and continue paying their Employees and Independent Contractors is critical to the Debtors' ability to maintain and administer their estates. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor the Wage Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business. Furthermore, as of the Petition Date, the Debtors believe that they do not owe Wage Obligations in excess of the statutory cap of \$15,150 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Statutory Cap") to any Employees. However, out of an abundance of caution, the Debtors seek authority to pay any amounts above the cap solely pursuant to the Final Order.



**i. Employee Compensation.**

12. In the ordinary course of business, the Debtors incur obligations to their Employees for wages, overtime, and similar obligations (the “Employee Compensation”). Because Employees are generally paid in arrears, certain Employees are owed accrued but unpaid Employee Compensation as of the Petition Date (the “Unpaid Employee Compensation”). Employee Compensation may also be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees, or as a result of Employees holding uncashed paper paychecks as of the Petition Date.

13. The majority of the Debtors’ payroll is made by direct deposit through electronic transfer of funds to the Employees’ bank accounts or other electronic means on a bi-weekly basis for U.S. Employees and on a bi-weekly or monthly basis for Non-U.S. Employees. All Employee Compensation accrues on either a salaried or hourly basis. As of the Petition Date, the Debtors believe there are approximately \$2.85 million in prepetition amounts outstanding on account of accrued but Unpaid Employee Compensation. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Unpaid Employee Compensation, including any prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors’ business.

**ii. Independent Contractors.**

14. In the ordinary course of business, the Debtors incur payment obligations to their Independent Contractors for services rendered to the Debtors (the “Independent Contractor Obligations”). The Debtors pay their Independent Contractors on a monthly basis at an agreed market rate for the services provided. The Independent Contractors perform critical accounting



and finance services that support the Debtors' Employees and operations. The Debtors believe that continuing to pay their Independent Contractors is critical to maintaining and administering their estates.

15. On average, the Debtors spend approximately \$28,000 per month on Independent Contractor Obligations. As of the Petition Date, the Debtors estimate that they owe approximately \$56,000 in accrued but unpaid Independent Contractor Obligations (the "Unpaid Independent Contractor Obligations"). Accordingly, the Debtors seek authority, but not direction, to pay prepetition Unpaid Independent Contractors Obligations and continue honoring Independent Contractor Obligations in the ordinary course of the Debtors' business.

**iii. Unpaid Commissions.**

16. In the ordinary course of business, the Debtors pay sales-based commissions to approximately 159 non-Insider<sup>5</sup> Employees (the "Non-Insider Commissions") and one Insider Employee (the "Insider Commissions,"<sup>6</sup> and together with the Non-Insider Commissions, the "Commissions"). These Employees market and sell the Debtors' products and services and generally receive commission payments in varying percentages based on the monthly recurring revenue generated by new sales on account of the Employee's efforts as well as the net revenue growth of each individual Employee's portfolio. Non-Insider Commissions are paid monthly in arrears and Insider Commissions are paid quarterly in arrears.

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<sup>5</sup> As such term is defined in section 101(31) of the Bankruptcy Code (the "Insiders"). For the avoidance of doubt, the Debtors reserve all rights with respect to the classification of any Employee as an "Insider," and no description of any Compensation and Benefits hereunder indicating that such Compensation and Benefits covers or is made available to "Insiders" or "non-Insiders" shall be construed as an admission or concession by the Debtors that any Employee of the Debtors is an "Insider."

<sup>6</sup> For the avoidance of doubt, the Debtors shall not make any non-ordinary course additional compensation, bonus, incentive, or severance payments to any Insider without further order of this Court.



17. The Commissions are an important part of eligible Employees' overall compensation packages and motivate the Employees to maximize their sales performance. Many of the Employees rely on the Commissions for their daily living expenses such that the failure to pay Commissions would impose undue hardship. On average, the Debtors spend approximately \$1.5 million per month on Commissions. As of the Petition Date, the Debtors owe approximately \$1.5 million in accrued but unpaid Commissions (the "Unpaid Commissions"), all of which is owed on account of Non-Insider Commissions and none of which is owed on account of Insider Commissions.

18. For the avoidance of doubt, accrued and unpaid prepetition Commissions do not exceed the Statutory Cap. Due to the particular importance of Commissions to the Debtors' business, including their ability to maintain workforce morale and sales momentum during these chapter 11 cases, the Debtors seek authority, but not direction, to pay all outstanding Commissions, including prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors' business.

#### **iv. Transitioned Employees.**

19. On May 1, 2017, the Debtors completed the acquisition of Lumen Technologies, Inc.'s ("Lumen") colocation business and its associated data centers. As part of that transaction, a number of Employees transitioned from Lumen to the Debtors (the "Transitioned Employees"). There are fifteen remaining Transitioned Employees, who are paid wages, overtime, and similar obligations (the "Transitioned Employee Compensation") by Lumen, and the Debtors reimburse Lumen for the Transitioned Employee Compensation in the ordinary course of business. Because Employees are generally paid in arrears, certain Transitioned Employees are owed accrued but unpaid Transitioned Employee Compensation as of the Petition Date (the "Unpaid Transitioned Employee Compensation"). As described above, Transitioned Employee Compensation may also



be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Transitioned Employees believe they should have been paid, or as a result of issued but uncashed paper paychecks as of the Petition Date.

20. The Debtors reimburse Lumen on a monthly basis. As of the Petition Date, the Debtors estimate that they owe approximately \$300,000 on account of accrued but Unpaid Transitioned Employee Compensation. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Unpaid Transitioned Employee Compensation, including prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors' business.

**B. Withholding Obligations.**

21. In the ordinary course of business, the Debtors incur obligations on account of Payroll Deductions and Payroll Taxes (each as defined below and collectively, the "Withholding Obligations"). The Debtors accumulate a monthly average of approximately \$2.4 million on account of the Withholding Obligations. As of the Petition Date, the Debtors believe there are approximately \$1.2 million in prepetition amounts outstanding on account of Withholding Obligations. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Withholding Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business.

**i. Payroll Deductions.**

22. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees' paychecks, including garnishments and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee's share of healthcare benefits and insurance premiums, 401(k) contributions, legally ordered deductions, and miscellaneous deductions (collectively,



the “Payroll Deductions”), and forward the Payroll Deductions to various third-party recipients. The Debtors retain only those Payroll Deductions related to the Employees’ share of health care benefits and insurance premiums. As of the Petition Date, the Debtors believe there are approximately \$400,000 in prepetition amounts outstanding on account of Payroll Deductions. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Payroll Deductions and to pay any prepetition claims with respect thereto in the ordinary course of business.

**ii. Payroll Taxes.**

23. In addition to the Payroll Deductions, certain federal and state laws require that the Debtors withhold amounts from Employees’ gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authorities (the “Employee Payroll Taxes”). The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (the “Employer Payroll Taxes” and, together with the Employee Payroll Taxes, the “Payroll Taxes”). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities in accordance with remittance intervals and deadlines established by those taxing authorities. As of the Petition Date, the Debtors believe there are approximately \$800,000 in prepetition amounts outstanding on account of Payroll Taxes. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Payroll Taxes and to pay any prepetition claims with respect thereto in the ordinary course of business.



**C. Payroll Processing.**

24. Certain Withholding Obligations for the Debtors' Employees are processed and administered by Ultimate Kronos Group Inc. ("UKG"). The Debtors incur a monthly average of approximately \$16,200 on account of payroll processing and application hosting services provided by UKG. As of the Petition Date, the Debtors estimate they owe approximately \$16,200 on account of prepetition payroll processing services (the "Unpaid Payroll Processing Fees"). Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Unpaid Payroll Processing Fees and to pay any prepetition claims with respect thereto in the ordinary course of business.

**D. Reimbursable Expenses.**

25. Prior to the Petition Date and in the ordinary course of business, the Debtors reimburse certain Employees for expenses incurred on behalf of the Debtors within the scope of their employment (the "Reimbursable Expenses").<sup>7</sup> Reimbursable Expenses include, among other expenses, travel-related expenses and business-related entertainment expenses. Employees who pay for their own Reimbursable Expenses up front apply for reimbursement of such expenses by submitting an expense report to the Debtors. Once the Debtors have determined that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Employees for the expenses.

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<sup>7</sup> For the avoidance of doubt, the Debtors also provide certain Employees with credit cards to cover travel and related expenses. However, the Debtors do not seek authority to maintain the credit cards or to pay prepetition amounts related thereto under this Motion, but rather request such authority as part of 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* filed contemporaneously herewith.



26. The Debtors incur a monthly average of approximately \$20,000 on account of Reimbursable Expenses. Additionally, as of the Petition Date, the Debtors estimate that they owe approximately \$40,000 on account of Reimbursable Expenses. The Debtors' inability to reimburse Employees for the Reimbursable Expenses could impose a hardship on the Employees where such individuals incurred obligations for the Debtors' benefit. Employees incurred the Reimbursable Expenses as business expenses on the Debtors' behalf and with the understanding that such expenses would be reimbursed. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Reimbursable Expenses and to pay any prepetition claims with respect thereto in the ordinary course of business consistent with prepetition practices.

## **II. Health and Welfare Coverage and Benefits.**

27. The Debtors have offered their Employees the ability to participate in a number of health, insurance, and benefits programs, including, among other programs, Medical and Prescription Coverage, Supplemental Medical Gap Coverage, Foreign Sponsored Health Plans, HSAs, FSAs, Life Insurance Coverage, Dental Insurance Coverage, Vision Insurance Coverage, Employee Assistance Program, and the Rally Wellness Benefits (each as defined herein). The Debtors also historically subsidize or continue to provide certain benefits to certain former Employees after their termination, retirement, or disability leave, including, without limitation, benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA," and, together with the Medical and Prescription Coverage, Supplemental Medical Gap Coverage, Foreign Sponsored Health Plans, HSAs, FSAs, Life Insurance Coverage, Dental Insurance Coverage, Vision Insurance Coverage, Employee Assistance Program, Rally Wellness Benefits, the "Health and Welfare Coverage and Benefits"). The Health and Welfare Coverage and Benefits are, in each case, available to full-time Employees (the "Eligible Employees").



28. The Debtors' Health and Welfare Coverage and Benefits include:

- (a) **U.S. Medical and Prescription Coverage:** The Debtors provide Eligible U.S. Employees with medical and prescription coverage programs ("Medical and Prescription Coverage") through (i) self-funded plans administered by United Health Care ("United") and (ii) fully-insured plans administered by Kaiser Permanente ("Kaiser"). The Kaiser plans are only offered to a subset of California Employees, approximately twenty-five of which are enrolled in Kaiser plans. Under the United plan, U.S. Employees can choose between two plan options with varying premiums and HSA (as defined herein) contributions. On average, the Debtors cover approximately 76 percent of the cost of premiums, while the Employees cover the remaining 24 percent. Legal spouses, domestic partners, and dependent children are eligible dependents and can be additionally covered. Approximately 92 percent of U.S. Employees enroll in Medical and Prescription Coverage. The monthly cost of the Medical and Prescription Coverage to the Debtors is approximately \$650,000. As of the Petition Date, the Debtors estimate they owe approximately \$650,000 on account of accrued but unpaid Medical and Prescription Coverage premiums.
- (b) **U.S. Supplemental Medical Gap Coverage:** The Debtors provide U.S. Employees with a supplemental medical gap coverage program ("Supplemental Medical Gap Coverage") through carrier Transamerica Life which covers supplemental medical needs such as inpatient hospital procedures and routine nursery care for dependent children. U.S. Employees must choose to opt into the Supplemental Medical Gap Coverage. The Debtors cover 100 percent of the cost of premiums under the Supplemental Medical Gap Coverage. Approximately 200 U.S. Employees have Supplemental Medical Gap Coverage. On average, monthly premiums on account of the Supplemental Medical Gap Coverage are approximately \$16,000. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of unpaid Supplemental Medical Gap Coverage.
- (c) **Foreign Sponsored Health Plans:** The Non-U.S. Employees are generally offered similar medical and prescription coverage under either Debtor-sponsored programs (the "Foreign Sponsored Health Plans") or government-sponsored programs. A majority of the Non-U.S. Employees are enrolled in Foreign Sponsored Health Plans, which are administered by various third-party providers, including Canada Life. The Foreign Sponsored Health Plans include coverage for, among other things, hospital visits, general health care, prescription drugs, dental, and vision care. The monthly cost of the Foreign Sponsored Health Plans to the Debtors is



approximately \$15,000. As of the Petition Date, the Debtors estimate that they owe approximately \$15,000 on account of obligations under the Foreign Sponsored Health Plans.

- (d) **Flex Spending Accounts and Health Savings Accounts:** The Debtors provide U.S. Employees with the opportunity to contribute to a dependent care flexible spending account (the “FSA”) and a health savings account (the “HSA”), each administered by Optum Bank. The FSA and the HSA allows U.S. Employees to voluntarily set aside pre-tax funds to pay for eligible health and welfare expenses. The Debtors do not contribute to the FSAs. For the 2023 calendar year, U.S. Employees can contribute up to \$2,500 or \$5,000 to their FSA, depending on the U.S. Employee’s marital status, and up to \$8,750 to their HSA, depending on the U.S. Employee’s age and familial status, and immediately draw on contributions to pay for eligible child and dependent care and health care expenses. The Debtors contribute to U.S. Employee HSAs based on the type of Medical and Prescription Coverage the Employee is enrolled in and whether the coverage includes spouses and/or dependents. The Debtors contribute approximately \$120,000 each month to U.S. Employee HSAs. Additionally, the Debtors pay a monthly administration fee of approximately \$1,200 to Optum Bank on account of the HSAs. As of the Petition Date, the Debtors estimate they owe approximately \$120,000 on account of unpaid HSA contributions and \$1,200 on account of unpaid HSA fees.
- (e) **Life Insurance Coverage:** The Debtors provide (i) basic life and accidental death and dismemberment insurance (at an amount calculated based on 100 percent of the Employee’s annual earnings, up to a fixed maximum amount), (ii) long- and short-term disability insurance to all active Employees who are working thirty or more hours per week, and (iii) supplemental, spouse, and child life products offered on a voluntary, Employee-paid basis (“Life Insurance Coverage”), administered by MetLife. The average monthly cost of the Life Insurance Coverage to the Debtors is approximately \$80,000 excluding voluntary products. As of the Petition Date, the Debtors estimate they owe approximately \$80,000 on account of unpaid Life Insurance Coverage.
- (f) **U.S. Dental Insurance Coverage:** The Debtors offer Eligible U.S. Employees basic and enhanced dental plans administered by Guardian (“Dental Insurance Coverage”). The dental plans provide for both in- and out-of-network coverage. Approximately 59 percent of the dental premiums is employer-paid. The average monthly cost of the Dental Insurance Coverage to the Debtors is approximately \$52,000. As of the Petition Date, the Debtors



estimate they owe approximately \$52,000 on account of unpaid Dental Insurance Coverage.

- (g) **U.S. Vision Insurance Coverage:** The Debtors offer vision insurance plans provided by VSP Vision (“Vision Insurance Coverage”). Approximately 25 percent of the vision premium is employer-paid. The average monthly cost of the Vision Insurance Coverage to the Debtors is approximately \$15,000. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of unpaid Vision Insurance Coverage.
- (h) **COBRA:** The Debtors are required to offer certain of their former U.S. Employees certain health benefits following termination of employment. Pursuant to COBRA, former Employees of the Debtors (the “COBRA Eligible Employees”) may continue using the Medical and Prescription Coverage, Dental Insurance Coverage, and Supplemental Medical Gap Coverage (the “COBRA Benefits”). COBRA Eligible Employees are entitled by law to continue to receive COBRA Benefits for up to eighteen, and occasionally thirty-six, months following termination of employment. The Debtors’ COBRA Eligible Employees are typically responsible for paying all costs associated with the COBRA Benefits except with respect to those former Employees whose COBRA Benefits are consideration under a severance agreement. In such instances where COBRA Benefits are included in a severance agreement, the Debtors pay for three months of COBRA Benefits. The Debtors contribute payments to the COBRA Benefits as part of their lump sum payment under the Non-Insider Severance Program (as defined herein). As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of COBRA Benefits. However, out of an abundance of caution, the Debtors request authority, but not direction, to (a) pay any prepetition amounts outstanding on account of the COBRA Benefits; (b) to continue to offer the COBRA Benefits, including to Employees who may be terminated after the Petition Date, if any, and to honor all postpetition obligations related thereto in the ordinary course of business consistent with past practices; and (c) to continue to pay fees related to the COBRA Benefits in the ordinary course of business on a postpetition basis.
- (i) **U.S. Employee Assistance Program:** The Debtors also provide U.S. Employees with an employee assistance program (the “Employee Assistance Program”) through Optum Behavioral Health designed to offer resources such as short-term counseling. The average monthly cost of the Employee Assistance Program to the Debtors is approximately \$1,200. As of the Petition Date, the



Debtors estimate they owe approximately \$2,400 of unpaid amounts on account of the Employee Assistance Program.

- (j) **U.S. Rally Wellness Benefits:** The Debtors also provide U.S. Employees with certain wellness benefits (the “Rally Wellness Benefits”) through Rally Health designed to offer resources such as well-being and coaching programs. The average monthly cost of the Rally Wellness Benefits to the Debtors is approximately \$3,000. As of the Petition Date, the Debtors estimate they owe approximately \$3,000 of unpaid amounts on account of the Rally Wellness Benefits.

29. The Debtors incur a monthly average of approximately \$953,400 on account of the Health and Welfare Coverage and Benefits. Additionally, as of the Petition Date, the Debtors estimate they owe approximately \$923,600 on account of unpaid Health and Welfare Coverage and Benefits. As described above, failure to continue the Health and Welfare Coverage and Benefits could cause Employees to experience severe hardship and make it difficult to retain the Debtors’ workforce. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Health and Welfare Coverage and Benefits and to pay any prepetition claims with respect thereto in the ordinary course of business.

### **III. Workers’ Compensation.<sup>8</sup>**

30. The Debtors maintain workers’ compensation insurance for their Employees at the statutorily required level for each state in which they have Employees (collectively, and as described herein, the “Workers’ Compensation Program”). As part of the Workers’ Compensation Program, the Debtors maintain a workers’ compensation insurance policy with Hartford (the “Workers’ Compensation Insurance Policy”).

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<sup>8</sup> In addition to the Workers’ Compensation Insurance Policy (as defined below), the Debtors maintain numerous other insurance policies, which are described in 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, (B) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage and (II) Granting Related Relief*, filed contemporaneously herewith and incorporated herein by reference.



31. The Debtors must continue claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.<sup>9</sup> There are currently no active open claims under the Workers' Compensation Program. To the extent any Employees assert claims arising under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with such claims. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

32. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that potentially could disrupt the reorganization process. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of accrued but unpaid Workers' Compensation Program obligations. However, out of an abundance of caution, the Debtors request authority, but not direction, to (a) pay prepetition amounts due on account of the Workers' Compensation Program and consistent with past practice, (b) continue the Workers' Compensation Program in the ordinary course of business, and (c) to the extent applicable, modify the automatic stay solely to allow Employees to assert claims under the Workers' Compensation Program.

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<sup>9</sup> The Debtors' Workers' Compensation Program may change postpetition in the ordinary course due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this Motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any necessary modifications thereto.



#### **IV. Retirement Plans**

##### **A. The 401(k) Plan.**

33. As of the Petition Date, the Debtors maintain a retirement savings plan for the benefit of their U.S. Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the “401(k) Plan”). The 401(k) Plan is administered by Principal Financial Group and allows for automatic pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code.

34. The Debtors also match U.S. Employees’ 401(k) contributions at a rate of 100 percent of an Employee’s first 1 percent of compensation contributed, and 50 percent on contributions between 2 percent and 6 percent of compensation (the “401(k) Matching Contributions”). The 401(k) Matching Contributions are made each February for the prior year.

35. During each calendar year, the Debtors incur approximately \$2.7 million on account of 401(k) Matching Contributions. The Debtors estimate that, as of the Petition Date, there are no amounts outstanding on account of 401(k) Matching Contributions. Out of an abundance of caution, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their 401(k) Matching Contributions if and when they come due in the ordinary course of business.

##### **B. Foreign Retirement Plans.**

36. As of the Petition Date, the Debtors maintain certain retirement plans for their Non-U.S. Employees (the “Foreign Retirement Plans”). Non-U.S. Employees located in Canada are able to participate in a registered retirement savings plan (the “RRSP”). The RRSP in Canada is administered by Manulife whereby the Debtors match 50 percent of a Non-U.S. Employee’s contribution up to a maximum of 4 percent of such Non-U.S. Employee’s contribution to the RRSP.



37. As of the Petition Date, the Debtors estimate they have accrued approximately \$10,000 on account of the Foreign Retirement Plans, all of which will become due and owing during the first twenty-one days after the Petition Date. The Debtors seek authorization to continue to satisfy amounts incurred on account of the Foreign Retirement Plans (including any prepetition amounts that may be outstanding) in the ordinary course of business on a postpetition basis.

**V. Paid Leave Benefits.**

38. The Debtors provide paid time off to certain eligible Employees (the “Paid Leave Benefits”). The Debtors’ Paid Leave Benefits program combines flexible time off, vacation, sick, and bereavement leave. When an Employee elects to use Paid Leave Benefits, that Employee is paid his or her regular hourly or salaried rate. Hourly Employees accrue Paid Leave Benefits at specified rates up to a maximum amount based on the Employee’s years of service. Salaried Employees may elect to use Paid Leave Benefits as needed, subject to management approval. Upon an Employee’s termination, the Debtors will cash out the Employee’s Paid Leave Benefits to the extent required by applicable law.

39. The Debtors believe that the continuation of the Paid Leave Benefits program in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, all Employees have come to depend on the Paid Leave Benefits. As of the Petition Date, the Debtors estimate that they owe approximately \$250,000 on account of accrued but unpaid Paid Leave Benefits. The Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to pay amounts on account of Paid Leave Benefits if and when they come due in the ordinary course of business, to the extent required by applicable law.

**VI. Additional Benefit Programs.**

40. In addition to the foregoing, the Debtors offer Employees the opportunity to participate in a range of ancillary benefits, including a work from home stipend



(the “WFH Stipend”) and a phone stipend (the “Phone Stipend,” and together with the WFH Stipend, the “Additional Benefit Programs”).

41. The Debtors provide a WFH Stipend to 321 Employees. New hires receive an initial \$300 stipend through such program and all other participating Employees receive a \$100 per month stipend. The Debtors incur a monthly average of approximately \$33,000 on account of the WFH Stipend. Additionally, the Debtors estimate that, as of the Petition Date, there are no amounts outstanding on account of the WFH Stipend.

42. In the ordinary course of business, the Debtors also provide certain Employees located at the Debtors’ call centers and data centers with a Phone Stipend. Such stipend is provided to 140 Employees and the Debtors incur a monthly average of approximately \$9,500 on account of the Phone Stipend. Additionally, the Debtors estimate that, as of the Petition Date, there are no amounts outstanding on account of the Phone Stipend.

43. The Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Additional Benefit Programs, and to pay any prepetition claims with respect thereto in the ordinary course of business.

## **VII. Non-Insider Retention Bonus Program.**

44. The Debtors also maintain a retention bonus program for approximately 525 non-Insider Employees (the “Non-Insider Retention Bonus Program”). The Debtors implemented the Non-Insider Retention Bonus Program prepetition to retain their valuable Employees. The Debtors do not maintain any other bonus program for these Employees. The Employees who are eligible work across all of the Debtors’ departments and are non-commission based. The Non-Insider Retention Bonus Program is crucial to retain the Debtors’ valuable Employees. Bonuses are paid at the end of specified two-month retention periods (the “Retention Periods”), with postpetition payments coming due June 30, 2023, and in subsequent periods approximately



every two months through the end of the calendar year. Under the Non-Insider Retention Bonus Program, each participant must remain employed through the applicable Retention Period. If an eligible non-Insider Employee is terminated for any reason other than death or disability or for cause, such Employee is entitled to receive a pro rata portion of the bonus for the Retention Period that the termination occurred. An Employee who resigns voluntarily or is terminated by Cyxtera for cause prior to the vesting of a Retention Period will not be eligible to receive any retention payments for such Retention Period.

45. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of the Non-Insider Retention Bonus Program. The Debtors estimate that the total amount that will come due under the Non-Insider Retention Bonus Program after the Petition Date and during the pendency of these chapter 11 cases is approximately \$7.6 million. Out of an abundance of caution, the Debtors seek authority to pay prepetition amounts on account of the Non-Insider Retention Bonus Program and to continue the Non-Insider Retention Bonus Program on a postpetition basis in the ordinary course of business. For the avoidance of doubt, the relief sought with respect to the Non-Insider Retention Bonus Program does not include payment of any obligations to any Insider. The Debtors shall not make any non-ordinary course bonus or incentive payments to any Insiders without further order of this Court.

#### **VIII. Non-Insider Severance Program.**

46. In the ordinary course of business, the Debtors maintain a severance program for the benefit of certain non-Insider Employees (the “Non-Insider Severance Program”). Under the Non-Insider Severance Program, certain Employees may be eligible for payment of severance if their employment is terminated due to any not-for-cause employer-initiated termination. Such severance payments (the “Non-Insider Severance Benefits”) are calculated by reference to a



terminated Employee's weekly salary in accordance with standard Debtor-instituted guidelines. These guidelines provide that non-Insider Employees accrue Non-Insider Severance Benefits based on length of service, subject to a maximum accrual period of twelve or sixteen weeks depending on the Employee's position. Non-Insider Severance Benefits are paid in a lump sum.

47. The Debtors' maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors' workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

48. As of the Petition Date, the Debtors do not believe that any Employees are entitled to Non-Insider Severance Benefits. Accordingly, the Debtors do not believe that there are any prepetition amounts outstanding on account of the Non-Insider Severance Benefits. Out of an abundance of caution, the Debtors seek authority to pay prepetition amounts on account of the Non-Insider Severance Benefits and to continue the Non-Insider Severance Program on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

#### **IX. Non-Employee Director Compensation.**

49. As of the Petition Date, the Debtors' board of directors (the "Board") includes eight non-Employee individuals who serve as directors (the "Directors") for Cyxtera Technologies, Inc. Five of the non-Employee Directors receive an average annual equity grant worth \$200,000 and an average annual retainer of approximately \$91,000, which is historically paid on a quarterly basis in arrears (the "Director Fees"). The three disinterested Directors (the "Disinterested Directors") receive monthly cash payments of \$40,000 (the "Disinterested Director Payments"). Non-Employee Directors are also entitled to expense reimbursement for certain Reimbursable



Expenses (the “Director Reimbursable Expenses,” and together with the Directors Fees and the Disinterested Director Payments, the “Director Compensation”).

50. As of the Petition Date, the Debtors do not believe they owe any amounts on account of Director Compensation and believe that they are authorized to pay any postpetition Director Compensation in the ordinary course. However, out of an abundance of caution, the Debtors seek authority to continue to pay the Director Compensation on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

### **Basis for Relief**

#### **I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.**

##### **A. Certain of the Compensation and Benefits Are Entitled to Priority Treatment.**

51. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Compensation and Benefits to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. To the extent an Employee is owed more than \$15,150 on account of certain Compensation and Benefits (and specifically, Unpaid Commissions), the Debtors submit that the full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.



52. The Debtors' Employees and Independent Contractors are essential to the Debtors' business, and payment of the Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtors' ordinary-course operations. Finding, attracting, and training new qualified talent would be extremely difficult absent the relief requested herein. Such recruitment efforts would most likely require, among other things, higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees.

**B. Payment of Certain Compensation and Benefits Is Required by Law.**

53. As discussed above, the Debtors seek authority, but not direction, to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' wages. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' wages and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors should be authorized to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998). The Debtors therefore request that the Court



recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

54. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all obligations related to the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of these chapter 11 cases.

55. The Debtors, therefore, respectfully request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize, but not direct, the Debtors to transmit such monies to the proper parties in the ordinary course of business.

## **II. Payment of the Compensation and Benefits Is Warranted Under Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.**

56. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, bankruptcy courts require only that a debtor show a sound business purpose to justify the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted) (requiring the debtor show a "sound business purpose" to justify its actions under section 363 of the Bankruptcy Code); *see also In re Lionel Corp.*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring a "good business reason" to approve a sale pursuant to section 363(b)); *In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) ("This Court follows the 'sound business purpose' test when examining § 363(b) sales.") (quoting *In re WBQ P'ship*,



189 B.R. 97, 102 (Bankr. E.D. Va. 1995)). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

57. Additionally, section 105(a) of the Bankruptcy Code further provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, including authorizing payments on account of the Compensation and Benefits pursuant to the doctrine of necessity. 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code, and supports the relief requested herein. *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor’s continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of [prepetition] claims” under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan).

58. The doctrine of necessity is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of chapter 11.”



*In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of [prepetition] claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain [prepetition] claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the [c]hapter 11 process”); *In re Chateaugay Corp.*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (affirming lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

59. Payment of the Compensation and Benefits is warranted under this authority and the facts of these chapter 11 cases. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Compensation and Benefits. Additionally, continuing ordinary course benefits will help boost Employee retention and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors’ ongoing business operations.

60. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors’ businesses, and the Debtors believe that absent the payment of the Compensation and Benefits owed to the Employees, the Debtors may experience Employee turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without these payments, the Employees may become demoralized and unproductive because of the potential significant



financial strain and other hardships Employees may face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' business is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases.

61. Courts in this district have granted similar relief to that requested in this Motion in previous chapter 11 cases. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 18, 2023) (authorizing the debtors to (a) pay prepetition employee wages, salaries, and other compensation, and reimbursable expenses, and (b) continue employee benefits programs on a final basis); *In re David's Bridal, LLC*, No.23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023) (same); *In re Block Fi, Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (same); *In re Nat'l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. Jan. 3, 2023) (same); *In re Alliant Tech., L.L.C.*, No. 21-19748 (JKS) (Bankr. D.N.J. Jan. 25, 2022) (same); *In re Christopher & Banks Corp.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (same).<sup>10</sup> Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay prepetition amounts outstanding on account of Compensation and Benefits, and to continue their prepetition Compensation and Benefits in the ordinary course of business on a postpetition basis.

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<sup>10</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.



### **III. The Non-Insider Retention Bonus Program Should Be Approved.**

62. The Debtors believe they have authority to continue the Non-Insider Retention Bonus Program as it is an ordinary course continuation of the Debtors' prepetition practices authorized by section 363(c) of the Bankruptcy Code and constitutes a sound exercise of the Debtors' business judgment. *See, e.g., In re Dana Corp.*, 358 B.R. 567, 581 (Bankr. S.D.N.Y. 2006); *In re Glob. Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007). However, out of an abundance of caution, the Debtors further believe that the Non-Insider Retention Bonus Program complies with the requirements of sections 503(b) and (c) of the Bankruptcy Code. Accordingly, for the reasons more fully set forth below, payments under the Non-Insider Retention Bonus Program are justified by the facts and circumstances of the Debtors' chapter 11 cases and should be approved.

63. The Debtors respectfully submit that the provisions otherwise applicable to retention programs pursuant to section 503(c)(1) of the Bankruptcy Code are inapplicable here because no Insiders will participate in the proposed Non-Insider Retention Bonus Program.

#### **B. The Non-Insider Retention Bonus Program Is a Valid Exercise of the Debtors' Business Judgment and Is Justified by the Facts and Circumstances of these Chapter 11 Cases.**

64. The standard for determining if the Non-Insider Retention Bonus Program does not run afoul of section 503(c)(3) of the Bankruptcy Code's requirement that such contemplated payments be justified by the facts and circumstances of the case is essentially the same business judgment standard articulated under section 363(b) of the Bankruptcy Code. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) ("Courts have held that the 'facts and circumstances' language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."). Section 503(c)(3) of the Bankruptcy Code generally



prohibits certain transfers made to officers, managers, consultants, and others that are not justified by the facts and circumstances of the case. 11 U.S.C. § 503(c)(3).

65. Here, the business justification supporting the Non-Insider Retention Bonus Program is clear—the Debtors require the key, non-Insider Employees’ specific knowledge and skill sets to preserve and maximize stakeholder value. The Non-Insider Retention Bonus Program Employees are intimately familiar with the Debtors’ operations and many have skills that are unique and difficult to replace. Without the Non-Insider Retention Bonus Program, the Debtors risk the departure of their most crucial Employees. Such departures would likely cause a substantial disruption to the efficiency and future growth of the Debtors’ operations, reducing profits and revenues to the detriment of all parties in interest. Moreover, it is the Debtors’ reasonable belief that the cost of the Non-Insider Retention Bonus Program is less than the cost of recruiting and training replacement Employees to oversee the Debtors’ business and operations. Retaining Employees through the Non-Insider Retention Bonus Program will accordingly maintain stability and allow the Debtors to focus their efforts on reorganizing as effectively as possible. Overall, the Debtors believe that the Non-Insider Retention Bonus Program is vital to retaining Employees and protecting the enterprise value associated therewith.

66. Because implementing the Non-Insider Retention Bonus Program will motivate the Debtors’ Employees to the benefit of all parties in interest, the Non-Insider Retention Bonus Program reflects a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases. *See, e.g., In re Glob. Home Prods., LLC*, 369 B.R. at 784 (“The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor’s business judgment.”); *In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, \*4 (Bankr. S.D.N.Y. Sept. 24, 2010) (holding that bonus payments are



“‘justified by the facts and circumstances of the case’ under section 503(c)(3) [where] they are within the ‘sound business judgment’ of the Debtors” (citation omitted)). Accordingly, to the extent necessary, the Non-Insider Retention Bonus Program satisfies section 503(c)(3) of the Bankruptcy Code.

**IV. A Limited Waiver of the Automatic Stay for Workers’ Compensation Claims Is Appropriate Here.**

67. Section 362(a) of the Bankruptcy Code operates to stay:

“the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .”

11 U.S.C. § 362(a)(1).

68. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers’ compensation claims in the appropriate judicial or administrative forum. Staying the workers’ compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees. In addition, as noted above, if the Debtors fail to maintain the Workers’ Compensation Program, state laws may prohibit the Debtors from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Workers’ Compensation Program to proceed.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

69. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations



and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

70. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Request of Waiver of Stay**

71. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find



that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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

**Reservation of Rights**

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



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

**No Prior Request**

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

**Notice**

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



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 5, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**INTERIM 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**

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



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim 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, (b) 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 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

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<sup>2</sup> 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: Interim 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

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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 \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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 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 Interim 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 Interim Order; *provided* that pending entry of the Final Order, the Debtors shall not make any payment to, or on account of, any individual with respect to any prepetition claim in excess of \$15,150 as set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and (c) pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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obligations, including the Unpaid Payroll Processing Fees, and all administrative and processing costs.

4. 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 any statutory committee appointed in the chapter 11 cases, 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 consulting with the Ad Hoc First Lien Group; *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.

5. 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 practices. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program.

6. 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: Interim 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

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7. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of any obligations owed under any Compensation and Benefits obligations.

8. 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.

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 practices.

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 further order of this Court; *provided* that, for the avoidance of doubt, nothing in the Motion or this Interim 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 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 Interim Order shall constitute a determination by the Court as to whether any individual



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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seeking payment pursuant to the Interim 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 Interim Order.

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

---

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 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.

13. Notwithstanding anything to the contrary contained in the Motion or this 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 *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* filed substantially contemporaneously herewith (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: Interim 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

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14. 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 Interim Order.

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

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

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

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

19. 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.

20. 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.



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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21. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

22. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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



**Exhibit B**

**Proposed Final Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

**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**

<sup>1</sup> 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.



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



(Page | 3)

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

Case No. 23-

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

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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"),<sup>2</sup> 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

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<sup>2</sup> 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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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.
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 any statutory committee appointed in the chapter 11 cases, 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 consulting with the Ad Hoc First Lien Group; *provided further* that the Debtors shall seek Court approval, upon motion and notice, if any modifications



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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.

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



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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* filed substantially contemporaneously herewith (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 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 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



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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 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



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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.

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.



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

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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.



This is **Exhibit "EE"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”): (a) authorizing, but not directing, the Debtors to (i) maintain insurance and surety coverage under the Insurance Policies and the Surety Bonds (as applicable) (each as defined herein) entered into prepetition and pay related prepetition obligations in the ordinary course of business and (ii) renew, supplement, modify, or purchase insurance and surety coverage in the ordinary course of business on a postpetition basis and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of*

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



*Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002 and 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.



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

### **The Insurance Policies and Related Payment Obligations**

7. In the ordinary course of business, the Debtors maintain approximately twenty- six insurance policies (collectively, the “Insurance Policies”) administered by various third-party insurance carriers (collectively, the “Insurance Carriers”). Generally, the Insurance Policies fall into the following categories: casualty, property, executive risk, environmental, and cyber. The Insurance Policies provide coverage for, among other things, the Debtors’ general liability; umbrella liability; property, earthquake, flood, and business interruption liability; stop loss; automobile liability; crime liability; directors’ and officers’ liability; technology professional liability; cybersecurity, and workers’ compensation.<sup>3</sup> The Debtors have selected policy specifications and insured limits that they believe to be appropriate given the relative risk of loss, the cost of the coverage, and industry practice. In the opinion of the Debtors’ management, they maintain adequate insurance with limits and coverages that they believe to be commercially reasonable.

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<sup>3</sup> The Debtors do not seek authority to maintain workers’ compensation coverage and to pay prepetition amounts related thereto under this Motion, but rather request such authority as part of 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 “Wages Motion”) filed contemporaneously herewith.



8. The Insurance Policies, each of which is defined in **Exhibit C** attached hereto, are essential to the ongoing operation of the Debtors' business.<sup>4</sup> The Debtors' ability to maintain the Insurance Policies, to renew, supplement, and modify the same as needed, and to enter into new insurance policies as needed in the ordinary course of business, is essential to preserving the value of the Debtors' businesses, operations, and assets. Moreover, in many instances, insurance coverage is required by statutes, rules, regulations, and contracts that govern the Debtors' commercial activities, including the requirements of the Office of the United States Trustee for the District of New Jersey (the "U.S. Trustee") that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. Accordingly, the Debtors seek authorization to maintain the Insurance Policies, to pay related prepetition obligations thereto, to renew, supplement, or modify the Insurance Policies as needed, and to enter into new insurance policies in the ordinary course of business upon entry of the Interim Order and Final Order.

**I. Premium Payments.**

9. The Insurance Policies generally are one year in length and renew annually, principally in July and August. The aggregate annual premium obligations associated with the Insurance Policies (the "Premiums") is approximately \$7.1 million, plus applicable taxes and surcharges. The Debtors also finance a portion of their Premiums pursuant to several premium financing agreements (the "Financing Agreements"). Pursuant to the Financing Agreements, the Debtors are required to make aggregate monthly premium payments of approximately \$460,000. In addition, from time to time, the Debtors may require additional coverage under their Insurance

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<sup>4</sup> The descriptions of the Insurance Policies set forth in **Exhibit C** constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the description in this Motion. Further, the Debtors request relief with respect to Insurance Policies payable to all Insurance Carriers, regardless of whether such Insurance Carrier is specifically identified on **Exhibit C**.



Policies for, for instance, one-time events. The Premiums on these additional insurance coverage purchases are billed as incurred by the Insurance Carriers.

10. As of the Petition Date, the Debtors owe approximately \$775,000 with respect to the Premiums. Therefore, the Debtors seek authority to pay any prepetition obligations owing on account of the Premiums, including under their Financing Agreements, in the ordinary course of business to ensure uninterrupted coverage thereunder, and to continue honoring Premium obligations and obligations under the Financing Agreements on a postpetition basis in the ordinary course of business consistent with their prepetition practices.

11. Certain of the Insurance Policies may be subject to audits during their respective periods (the “Insurance Policy Audits”), which may result in an adjustment of the Premiums owed on account thereof. As of the Petition Date, there are no Insurance Policy Audits presently being undertaken. However, out of an abundance of caution, the Debtors seek authority to honor any amounts owed on account of Insurance Policy Audits in the ordinary course of business.

## **II. Deductible Fees.**

12. Pursuant to certain of the Insurance Policies, the Debtors are required to pay various deductibles or retention amounts (the “Insurance Deductible(s)”), depending upon the type of claim and Insurance Policy involved. Under such Insurance Policies, the Insurance Carriers may pay claimants and then invoice the Debtors for any Insurance Deductible. In such situations, the Insurance Carriers may have prepetition claims against the Debtors. The Debtors risk losing their Insurance Policies if they fail to make their Insurance Deductible payments, which would not only greatly increase the risk related to the Debtors’ operations but may cause them to violate state laws requiring them to have such policies. To avoid this outcome, the Debtors seek authority to honor any amounts owed on account of Insurance Deductibles in the ordinary course of business.



**The Debtors' Surety Bond Program**

13. In the ordinary course of business, the Debtors have in the past, and may in the future, be required to provide surety bonds (the “Surety Bonds”) to certain third parties, often utility companies, to secure the Debtors’ payment or performance of certain obligations (the “Surety Bond Program”).<sup>5</sup>

14. When a party that transacts with the Debtors requests a bond and the Debtors determine that they have better operational uses for cash and do not wish to provide the cash and cash equivalents necessary to satisfy such request, they may pursue a surety bond. In such situations, sureties provide, upfront, the full amount of the requested cash and cash equivalents to the requesting party on behalf of the Debtors, in exchange for a fee from the Debtors and an amount of collateral to secure the bond issuance on the Debtors’ behalf. The issuance of a surety bond shifts the risk of the Debtors’ nonperformance or nonpayment from an obligee to a surety.

15. To continue their business operations during these chapter 11 cases, the Debtors must maintain the Surety Bond Program (as applicable), including paying bond premiums and related fees as they come due, providing the sureties (collectively, the “Sureties”) with collateral, and acquiring additional bonding capacity as needed in the ordinary course of business, and executing other agreements, as appropriate, in connection with the Surety Bond Program (as applicable).

16. The Debtors do not currently maintain any Surety Bonds. Accordingly, as of the Petition Date, the Debtors do not owe any amounts on account of the Surety Bond Program. However, out of an abundance of caution, the Debtors seek authority to continue the Surety Bond

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<sup>5</sup> Prior to the Petition Date, the Debtors maintained eight Surety Bonds. However, on April 7, 2023, the Debtors and the surety thereto mutually agreed to terminate the Surety Bonds. The relief sought herein is with respect to entry into new Surety Bonds as the Debtors deem necessary in the ordinary course of business.



Program in the ordinary course of business, including maintaining new Surety Bonds in the future if the Debtors, in their business judgment, determine it is necessary.

### **The Debtors' Insurance Brokers**

17. The Debtors retain the services of insurance brokers to help manage their portfolios of risk. The Debtors obtain most of their Insurance Policies through brokers, AON Risk Services Northeast Inc., AON Risk Services Southwest, Inc., Aon Risk Services South, Inc., Aon Risk Services Central, Inc., Aon Risk Services Companies, Inc., Cobbs Allen Capital LLC, Aon Risk Services, Inc. of Florida, Aon Canada, Inc., the Magnes Group Inc., and CAC Specialty (the “Brokers”). The Brokers, among other things: (a) assists the Debtors in obtaining comprehensive insurance and surety coverage for their operations in a cost-effective manner; (b) manages renewal data; and (c) provides ongoing support throughout the applicable policy periods for the Insurance Policies. In exchange for these services, the Debtors pay a broker commission and brokerage fees (collectively, the “Broker Fees”).

18. As of the Petition Date, the Debtors do not believe that they owe any amounts to the Broker on account of Broker Fees. Out of an abundance of caution, however, the Debtors seek authority to pay any prepetition obligations owed to the Brokers and continue to pay the Brokers for services rendered in the ordinary course of business on a postpetition basis to ensure uninterrupted coverage under their Insurance Policies.

### **Basis for Relief**

#### **I. Continuation of the Insurance Policies is Required by the Bankruptcy Code and U.S. Trustee Guidelines.**

19. Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). In addition, in many



instances, the coverage provided under the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors' commercial activities, including the operating guidelines issued by the Office of the United States Trustee for the District of New Jersey (the "U.S. Trustee Guidelines"). Accordingly, the Debtors believe it is essential to their estates, and consistent with the Bankruptcy Code and the U.S. Trustee Guidelines, that they continue to satisfy all obligations related to the Insurance Policies and the Surety Bond Program (as applicable) and have the authority to supplement, amend, extend, renew, or replace their Insurance Policies and Surety Bond Program as needed, in their judgment, without further order of the Court.

**II. The Debtors Should Be Authorized to Satisfy Prepetition Obligations Required under the Insurance Policies and Surety Bond Program and to Continue Honoring Such Obligations Postpetition.**

20. The relief requested herein is essential to the Debtors' continuation of ordinary course operations and, as such, is warranted under sections 105(a) and 363 of the Bankruptcy Code. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a [b]ankruptcy [c]ourt to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

21. Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in possession may enter into transactions, including the use, sale, or lease of property in the ordinary course of business, without notice or a hearing. 11 U.S.C. § 363(c)(1). The Debtors submit that obligations on account of the Insurance Policies and the Surety Bond Program are within the



ordinary course of business and thus may be continued in the Debtors' discretion under section 363(c)(1) of the Bankruptcy Code. In the alternative, "[t]he [debtor in possession], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]" 11 U.S.C. § 363(b)(1). This provision grants a court broad flexibility to authorize a debtor to pay prepetition claims where a sound business purpose exists. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."; *The Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

22. Section 105(a) of the Bankruptcy Code further provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code, pursuant to the doctrine of necessity. 11 U.S.C. § 105(a). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581–82 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor's continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. at 824–25 (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of pre-petition claims" under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the



doctrine of necessity is the standard for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty "can only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, this Court may grant the relief requested herein.

23. The doctrine of necessity is satisfied here. The nature of the Debtors' business and these chapter 11 cases render it essential for the Debtors to maintain their Insurance Policies, Financing Agreements, and Surety Bond Program (as applicable) on an ongoing and uninterrupted basis. The non-payment of any premiums, deductibles, or related fees under the Insurance Policies, Financing Agreements, or Surety Bonds (as applicable) could result in one or more of the Insurance Carriers or Sureties terminating or declining to renew the Insurance Policies or Surety Bonds or refusing to enter into new insurance policies or surety bonds with the Debtors. If any of the Insurance Policies or Surety Bonds lapse without renewal, the Debtors could be exposed to substantial liability or property damages, to the detriment of all parties in interest.

24. Any interruption in insurance coverage or lapse in maintenance of a Surety Bond would expose the Debtors to a number of risks, including: (a) the possible incurrence of direct liability for the payment of claims that otherwise would have been covered by the Insurance Policies or Surety Bonds; (b) the possible incurrence of material costs and other losses that otherwise would have been reimbursed; (c) the possible inability to obtain similar insurance



coverage or surety bonds on terms as equally favorable as the present coverage; and (d) the possible incurrence of higher costs for re-establishing lapsed Insurance Policies or obtaining new insurance coverage or surety bonds.

25. Authority to continue the Surety Bond Program is also necessary to maintain the Debtors' current business operations and avoid severe disruption at this critical juncture in these chapter 11 cases. Although the Debtors do not currently have any Surety Bonds, it is possible that the Debtors will determine, in their business judgement, to enter into new Surety Bonds to in the future consistent with past practices. In short, failure to maintain the Insurance Policies and any Surety Bonds could have a detrimental impact on the Debtors' business and the value of their estates.

26. Further, the continued retention of the Brokers allows the Debtors and their employees to focus on their core operational matters. The Debtors are not well-suited to bring the services provided by the Brokers in-house. If the Debtors fail to make timely payments to the Brokers, the Debtors may lose access to the Brokers' valuable services, disrupting management to the detriment of all stakeholders. Accordingly, the Debtors submit that the requirements of section 363(b) of the Bankruptcy Code are satisfied.

27. Here, the Debtors seek to continue, amend, supplement, and extend their existing Insurance Policies, Financing Agreements, and Surety Bond Program, and purchase new Insurance Policies, and Surety Bonds in the ordinary course of business. As noted above, continuation of the Insurance Policies, Financing Agreements, and the Surety Bond Program is essential to continuing uninterrupted operations during these chapter 11 cases and preserving the value of the Debtors' business, properties, and assets of the estates. The Insurance Policies protect the Debtors and other parties in interest from losses caused by casualty, natural disaster, fraud, or other



unforeseen events. Moreover, in some cases, maintenance of insurance coverage is required by the regulations, laws, and contracts that govern the Debtors' commercial activities, including the U.S. Trustee's requirement that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. Accordingly, in the event any of the Insurance Policies lapse or new coverage is required or necessary, it is imperative that the Debtors be able to renew, supplement, or purchase insurance coverage or surety bonds on a postpetition basis in the ordinary course of business.

28. Courts in this district and other jurisdictions have granted relief similar to the relief requested herein under sections 105(a) and 363(b) of the Bankruptcy Code. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J Apr. 25, 2023) (authorizing debtors to continue their insurance policies and surety bond program on an interim basis); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J Jan. 17, 2023) (authorizing debtors to continue their insurance policies and surety bond program on a final basis); *In re David's Bridal, LLC* No. 23-13131 (CMG) (Bankr. D.N.J Apr. 17, 2023) (authorizing debtors to continue their insurance policies and surety bond program on an interim basis); *In re SLT Holdco, Inc.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 29, 2020) (authorizing debtors to continue their insurance policies); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 10, 2020) (same).<sup>6</sup>

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

29. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request made to the Debtors' proposed counsel.



requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The Debtors' ability to renew, supplement, or purchase insurance coverage or surety bonds on a postpetition basis in the ordinary course of business is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

#### **Request of Waiver of Stay**

30. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

#### **Waiver of Memorandum of Law**

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

#### **Reservation of Rights**

32. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute



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

**No Prior Request**

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



**Notice**

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

*[Remainder of page intentionally left blank.]*



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 5, 2023

*/s/ Michael D. Sirota*

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*Proposed Co-Counsel for Debtors and  
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**Exhibit A**

**Proposed Interim Order**



**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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**INTERIM 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 seven (7), is

**ORDERED.**



(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim 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, (b) 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 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

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<sup>2</sup> 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: Interim 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

---

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 \_\_\_\_\_, **2023 at \_\_\_\_\_ (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 \_\_\_\_\_, **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 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 Interim Order on each Insurance Carrier listed on Exhibits C to the Motion within two (2) business days after the date this Interim Order is entered.
4. The Debtors are authorized to honor the terms of the Financing Agreement and pay premiums thereunder.
5. 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



(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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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 collateral and indemnity requirements in the ordinary course of business; and (g) executing other agreements in connection with the Surety Bond Program.

6. 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.

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

9. 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 Interim Order.



(Page | 6)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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10. Nothing in the Motion or this Interim Order waives or modifies the requirements of the RSA, including, without limitation, the consent and consultation rights contained therein.

11. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained, hereunder herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order.

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



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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this 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.

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 Interim Order.

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

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



(Page | 8)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim 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

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16. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim 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. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

20. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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



**Exhibit B**

**Proposed Final Order**



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

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

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In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**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 seven (7), is  
**ORDERED.**



(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

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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"),<sup>2</sup> 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 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

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<sup>2</sup> 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) 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

---

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 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 Agreement 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



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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

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collateral and indemnity requirements in the ordinary course of business; and (g) executing other agreements in connection with the Surety Bond Program.

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. Nothing in the Motion or this Final Order waives or modifies the requirements of the RSA, including, without limitation, the consent and consultation rights contained therein.

9. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained, hereunder herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order.

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



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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

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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 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) 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

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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 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 are authorized to take all reasonable 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.



**Exhibit C**

**Insurance Policies**



<b>Insurance Carrier</b>	<b>Policy Type</b>	<b>Policy Number</b>	<b>Expiration Date</b>	<b>Annual Gross Premium</b>
QBE Insurance Corporation (D&O Policy)	D&O	130001026	July 29, 2023	\$1,710,000
National Union Fire Insurance Company of Pittsburgh, Pa.	D&O	01-424-66-77	July 29, 2023	\$381,500
XL Specialty Insurance Company	D&O	ELU184568-22	July 29, 2023	\$1,165,500
Hiscox Insurance Company Inc.	Kidnap and Ransom	UKA3011951.22	July 29, 2025	\$4,121
AXA XL - Professional Insurance	Crime	ELU184580-22	July 29, 2022	\$26,729
The Hartford	Auto Liability	84 UEN AF4126	August 1, 2023	\$15,308
Beazley Insurance Company, Inc.	D&O	V2FCD4220201	July 29, 2023	\$385,000
Midvale Indemnity Company	D&O	ECL-142399033-01	July 29, 2023	\$265,000
BMS Risk Solutions	Terrorism	(UMR) B128419899W22	1 August 2023	\$56,700
Zurich North America	Property	PPR 0281876-05	August 1, 2023	\$1,190,713
Allied World Assurance Company (U.S.) Inc.	Site specific Environmental	0311-7969	March 29, 2024	\$9,239
Zurich Insurance Company Ltd	Property	8845541	August 1, 2023	\$24,861
Beazley Insurance Company, Inc.	Fiduciary	V2FCB9220201	July 29, 2023	\$82,000
Ironshore	Storage Tank	IRONTX009053442	August 1, 2023	\$20,078
The Hartford	GL	84 UEN AF4127	August 1, 2023	\$47,476
Hartford Casualty Insurance Company	Umbrella	84 XHU AF3231	August 1, 2023	\$33,110
Chubb	Foreign master	PHFD37252013 006	August 1, 2023	\$16,501
Nat'l Union & Fire	Business Travel Accident	GTP 0009153133	August 1, 2023	\$2,056
Chubb Insurance Company of Canada	Canadian CGL	CGL326088	August 1, 2023	\$1000
North American Capacity	NA Specialty	88X130014300	August 1, 2023	\$86,995
CRC Group	Property	CTE009149	August 1, 2023	\$249,734



Crum & Forster	Cyber	EOL238004	June 1, 2024	\$207,770
QBE	Cyber	130002888	June 1, 2024	\$166,160
Canopus	Cyber	CYT202100086-01	June 1, 2024	\$131,854
Lloyds	Cyber	W32857220101	June 1, 2024	\$259,626
UnitedHealthcare Insurance Company	Stop Loss	GA-910947	December 31, 2023	\$552,000
Chubb European Group SE	Casualty	NLCANY06417	August 1, 2023	\$3,500



This is **Exhibit "FF"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**DEBTORS' MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS (I) AUTHORIZING THE PAYMENT OF  
CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “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, including, or following the Petition Date) and (ii) undertake the Tax Planning Activities; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.



final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) retail colocation—the practice of renting space and power to customers to deploy their technology infrastructure including servers, storage, and security devices in an extremely resilient and highly connected environment; (ii) interconnection services—the practice of connecting information technology equipment to a customer’s network service providers; and (iii) digital exchange services—the practice of offering customers additional resources including the ability to rent Cyxtera-owned servers or the ability to access partner-delivered products and software to help customers holistically manage their hybrid technology systems. Cyxtera offers this advanced suite of services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees worldwide and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion



requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **Taxes and Fees Overview**

7. In the ordinary course of business, the Debtors collect, withhold, and incur sales and use taxes, income taxes, business license fees, foreign taxes, and real and personal property taxes, as well as other governmental taxes, interest, penalties, fees, assessments, and additions to tax (collectively, “Taxes and Fees”).<sup>3</sup> The Debtors pay or remit, as applicable, Taxes and Fees to various governmental authorities (each, an “Authority,” and collectively, the “Authorities”) either (a) directly by the Debtors (“Direct Taxes and Fees”) or (b) indirectly on the Debtors’ behalf by certain third parties (“Indirect Taxes and Fees”) on a monthly, quarterly, annual, or other periodic basis depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. A schedule identifying the Authorities is attached hereto as **Exhibit C**.<sup>4</sup> The Debtors generally pay and remit Taxes and Fees through checks and electronic transfers that are processed through their banks and other financial institutions or service providers. From time to time, the Debtors may also receive tax credits for overpayments or refunds in respect

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<sup>3</sup> This Motion does not seek relief with respect to the Debtors’ collection and remittance of employee-related taxes and withholdings, which are instead addressed in 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*, filed contemporaneously herewith.

<sup>4</sup> Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted Authorities from **Exhibit C**. The Debtors request relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified in **Exhibit C**.



of Taxes or Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes or Fees or have the amount of such credits refunded to the Debtors.

8. The Indirect Taxes and Fees include obligations related to Sales and Use Taxes and Property Taxes (each as defined herein) that are paid in the ordinary course on the Debtors' behalf by Debtors' third-party tax consultant Ryan, LLC ("Ryan"). To pay the applicable Indirect Taxes and Fees, Ryan sends the Debtors a funding request for the exact amount of the applicable Indirect Tax and Fees to be transmitted, which Ryan then remits to the applicable Authorities once the funds are received from the Debtors. In some instances, Ryan negotiates with certain of the Authorities to reduce property tax valuations, and thereby the amounts of certain Indirect Taxes and Fees due and owing by the Debtors.

9. Additionally, the Debtors are subject to, or may become subject to, routine audit investigations on account of tax returns and/or tax obligations ("Audits") during these chapter 11 cases. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors (such additional Taxes and Fees, "Assessments").<sup>5</sup> The Debtors seek authority to pay or remit tax obligations on account of any Assessments as they arise in the ordinary course of the Debtors' businesses, including as a result of any resolutions of issues addressed in an Audit.

10. The Debtors seek authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees (including any obligations subsequently determined upon Audit or otherwise to be owed), including: (a) where Taxes and Fees accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition or were paid in an amount less than actually owed; (c) where payments made

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<sup>5</sup> Nothing in this Motion, or any related order, constitutes or should be construed as an admission of liability by the Debtors with respect to any Audit or Assessment. The Debtors expressly reserve all rights with respect to any Audit and the right to contest any Assessments claimed to be due as a result of any Audit.



prepetition by the Debtors were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of these chapter 11 cases, including as a result of Audits. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees for so-called “straddle” periods.<sup>6</sup>

11. Finally, the Debtors seek authority 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”).

12. Any failure by the Debtors to pay Taxes and Fees could materially disrupt the Debtors’ business operations in several ways, including (but not limited to): (a) the initiation of

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<sup>6</sup> Claims for so-called “straddle” Taxes and Fees may be entitled to administrative claim treatment pursuant to section 503(b)(1)(B) of the Bankruptcy Code. A recent Delaware bankruptcy court decision held that the portion of a “straddle” tax claim that is attributable to the prepetition portion of a “straddle” period is not entitled to administrative priority and, in fact, is not entitled to priority under section 507(a)(8)(A) of the Bankruptcy Code. *See In re Affirmative Ins. Holdings, Inc.*, 607 B.R. 175, 188 (Bankr. D. Del. 2019). This decision was reversed by the District Court on appeal. *See In re Affirmative Ins. Holdings Inc.*, 620 B.R. 73 (D. Del. 2020). Because the Debtors could be subject to late payment penalties and interest in the event they do not pay such “straddle” Taxes and Fees and a court ultimately concludes that such taxes are entitled to administrative treatment, the Debtors are seeking the authority to pay such “straddle” Taxes and Fees as they become due under applicable law. The Debtors reserve their rights with respect to the proper characterization of any “straddle” period Taxes and Fees and to seek reimbursement of any portion of any payment made that ultimately is not entitled to administrative or priority treatment. A “straddle” period is a taxable period that includes but not does not end on the Petition Date.



Audits by the Authorities, which would unnecessarily divert the Debtors' attention from these chapter 11 cases; (b) the suspension of the Debtors' operations, the filing of liens, the lifting of the automatic stay, and/or the pursuit of other remedies that will harm the Debtors' estates by the Authorities; and (c) in certain instances, the subjection of Debtors' directors and officers to claims of personal liability, which would distract those key individuals from their duties related to the Debtors' restructuring. Taxes and Fees not timely paid as required by law may result in fines and penalties, the accrual of interest, or both. The Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Accordingly, the Debtors seek authority to pay, in their reasonable discretion, the Taxes and Fees (including Assessments) in the ordinary course as they become due and to engage in Tax Planning Activities as necessary.

13. The Debtors estimate that approximately \$15,170,000 in Taxes and Fees is outstanding as of the Petition Date.<sup>7</sup>

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date
Income Taxes	Local, state, and federal taxes imposed on income earned in the ordinary course of business, generally payable on an annual basis.	\$0
Sales and Use Taxes	Taxes on goods and services sold or used, assessed based on the value of such goods and services, generally payable on a monthly basis.	\$220,000
Foreign Taxes	Taxes due to Authorities in foreign jurisdictions, including foreign corporate income taxes, value added taxes, foreign regulatory fees, and business rate taxes.	\$740,000

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<sup>7</sup> The Debtors cannot predict the amounts of any potential Assessments that may result from Audits, if any. Accordingly, the Debtors' estimate of outstanding Taxes and Fees as of the Petition Date does not include any amounts relating to potential Assessments.



Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date
Property Taxes	Taxes related to real and personal property holdings, payable as such taxes come due in the ordinary course, at least on an annual basis.	\$14,080,000 <sup>8</sup>
Business License Fees	Fees related to compliance with state licensing, permits, reporting, and other fees paid to state agencies.	\$30,000
Regulatory and Other Taxes and Fees	Taxes and Fees related to compliance with regulatory requirements, including periodic licensing, permitting, reporting, and similar requirements, payable on a monthly, quarterly, or annual basis, depending on the specific Tax or Fee.	\$100,000
<b>Total</b>		\$15,170,000

#### **I. Income Taxes.**

14. The Debtors incur and are required to pay various state, local, and federal income taxes (collectively, the “Income Taxes”) in the jurisdictions where the Debtors operate. The Debtors generally remit Income Taxes on an annual basis. In some jurisdictions, the Debtors remit to relevant Authorities estimated amounts with respect to Income Taxes, resulting in tax credits or overpayments that may be refunded to the Debtors in certain circumstances. In 2022, the Debtors remitted approximately \$200,000 in Income Taxes to the applicable Authorities.

15. As of the Petition Date, the Debtors estimate that they do not owe anything on account of prepetition Income Taxes to the applicable Authorities. However, out of an abundance of caution, the Debtors request authority, but not direction, to satisfy any amounts owed on account of such Income Taxes that may be due and owing as of the Petition Date and further seek authority

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<sup>8</sup> Property Taxes are assessed at different times of year depending on the jurisdiction and are remitted to the applicable Authorities in the ordinary course of business.



to continue honoring Income Taxes as they become due and owing in the ordinary course of business on a postpetition basis during their chapter 11 cases.

## **II. Sales and Use Taxes.**

16. The Debtors incur, collect, or remit sales and use taxes to the Authorities in connection with the sale, purchase, and use of goods and services (collectively, the “Sales and Use Taxes”). The Debtors remit all Sales and Use Taxes to the Authorities indirectly through Ryan.

17. The Debtors generally remit Sales and Use Taxes indirectly through Ryan on a monthly basis. In 2022, the Debtors remitted approximately \$2,800,000 in Sales and Use Taxes to the applicable Authorities. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately \$220,000 in Sales and Use Taxes that have not been remitted to the relevant Authorities. The Debtors request authority, but not direction, to satisfy any amounts owed on account of such Sales and Use Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

## **III. Foreign Taxes.**

18. Because part of the Debtors’ business is conducted abroad, the Debtors incur various taxes from foreign jurisdictions, including foreign corporate income taxes, value added taxes, business rate taxes, and foreign regulatory fees (collectively, “Foreign Taxes”). In 2022, the Debtors remitted approximately \$1,630,000 in Foreign Taxes to the applicable Authorities. As of the Petition Date, the Debtors estimate that they owe approximately \$740,000 to the applicable Authorities on account of prepetition Foreign Taxes. The Debtors request authority, but not direction, to satisfy any amounts owed on account of such Foreign Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.



#### IV. Property Taxes.

19. State and local laws in the jurisdictions where the Debtors operate generally grant Authorities the power to levy property taxes against the Debtors' real and personal property (collectively, the "Property Taxes").<sup>9</sup> To avoid the imposition of statutory liens on their real and personal property, the Debtors pay the Property Taxes as they come due in the ordinary course of business. In some instances, after the Authorities release initial real property valuations for the purpose of levying certain Property Taxes, Ryan negotiates with certain of the Authorities regarding the property valuations to seek reductions to the amount of the Property Taxes due and owing by the Debtors.

20. In 2022, the Debtors remitted approximately \$24,700,000 in Property Taxes to the applicable Authorities. This includes the Indirect Real Property Taxes paid by or remitted through the Debtors' landlords and Ryan. As of the Petition Date, the Debtors estimate that they have incurred approximately \$14,080,000 in Property Taxes that have not been remitted to the relevant Authorities. The Debtors request authority, but not direction, to satisfy any amounts owed on account of such Property Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

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<sup>9</sup> Certain of the Debtors' landlords remit Property Taxes on properties that the Debtors lease to the Authorities, which the Debtors indirectly pay pursuant to the terms of the respective leases with such landlords (the "Indirect Real Property Taxes"). In some cases, the Debtors' payment obligations related to the Indirect Real Property Taxes may be bundled with other landlord costs as they are invoiced to the Debtors with other non-tax items, such as base rent. In other cases, the Debtors' landlords estimate the amount of Indirect Real Property Taxes due at the start of the year and the Debtors remit payment on a periodic basis. At the end of the year, these estimates are reconciled with the assessed Indirect Real Property Taxes and the Debtors either are reimbursed for the excess amount paid or pay the landlord the remaining balance. In accordance with section 365(d)(3) of the Bankruptcy Code, the Debtors will continue to make payments for the Indirect Real Property Taxes in the ordinary course of business pursuant to the terms of the applicable leases.



**V. Business License Fees.**

21. Certain state and local laws in the jurisdictions where the Debtors operate require the Debtors to obtain and pay fees to the applicable Authorities for a wide range of business licenses and annual reports to remain in good standing (collectively, “Business License Fees”).<sup>10</sup> The methods for calculating Business License Fees and the deadlines for paying such amounts due thereunder vary by jurisdiction. In 2022, the Debtors remitted approximately \$300,000 in Business License Fees to the applicable Authorities. In the ordinary course of business, the Debtors remit the Business License Fees when expensed and therefore generally do not accrue amounts on account of Business License Fees. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately \$30,000 in Business License Fees that have not been remitted to the relevant Authorities. The Debtors request authority, but not direction, to satisfy any amounts owed on account of such Business License Fees that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

**VI. Regulatory and Other Taxes and Fees.**

22. The Debtors incur, in the ordinary course of business, certain SEC filing fees, Nasdaq listing fees, certificate of authority fees, corporate regulatory fees, franchise fees, intellectual property fees, and other miscellaneous taxes and fees (collectively, “Regulatory and Other Taxes and Fees”). The Debtors typically remit Regulatory and Other Taxes and Fees to the relevant Authorities on a monthly, quarterly, or annual basis. In 2022, the Debtors remitted approximately \$470,000 in Regulatory and Other Taxes and Fees to the applicable Authorities. As of the Petition Date, the Debtors estimate that approximately \$100,000 in Regulatory and Other

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<sup>10</sup> Certain of the Debtors’ Business License Fees are paid indirectly through Corporate Creations Network Inc. (“Indirect Business License Fees”). For the avoidance of doubt, Business License Fees include Indirect Business License Fees.



Taxes and Fees will have accrued and remain unpaid to the relevant Authorities. The Debtors request authority, but not direction, to satisfy any amounts owed on account of such Regulatory and Other Taxes and Fees that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

### **Basis for Relief Requested**

#### **I. Certain of the Taxes and Fees May Not Be Property of the Debtors' Estates.**

23. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors’ legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” Certain Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. *See, e.g.*, 26 U.S.C. § 7501 (stating that all IRS taxes collected or withheld are held in trust); *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate). For example, all U.S. federal internal revenue tax withheld is considered to be held in a special fund in trust for the United States. *Begier*, 496 U.S. at 60. Because the Debtors may not have an equitable interest in funds held on account of such “trust fund” Taxes and Fees, the Debtors should be permitted to pay those funds to the applicable Authorities as they become due.<sup>11</sup>

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<sup>11</sup> For clarity, the Debtors are requesting authority to pay Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.



**II. Certain Taxes and Fees May Be Priority Claims Entitled to Priority Treatment Under the Bankruptcy Code.**

24. Claims on account of certain Taxes and Fees may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Courts have authorized early payment of priority claims when such early payment is intended to prevent some harm or to procure some benefit for the estate. *See, e.g., In re Lehigh & N. Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding courts may authorize payment of prepetition claims under the “necessity of payment” doctrine when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (stating that the court may authorize pre-plan payment of priority claims because “the need to pay these claims in an ordinary course of business time frame is simple common sense”).

25. Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of junior creditors. *See In re Equalnet*, 258 B.R. at 369 (“[C]ertain types of claims enjoy a priority status in addition to being sometimes critical to the ongoing nature of the business. For instance . . . certain tax claims are both priority claims in whole or in part. The need to pay these claims in an ordinary course of business time-frame is simple common sense.”). Payment



of such Taxes and Fees likely will give Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that might otherwise accrue on such Taxes and Fees during these chapter 11 cases.

26. It is also possible that at least some of the Taxes and Fees may be entitled to secured status with respect to the property that the Debtors own. As secured claims, these Taxes and Fees would be entitled to priority treatment when the Debtors sell the property that these Taxes and Fees are recorded against or when the Debtors confirm a plan of reorganization. *See* 11 U.S.C. §§ 506(a); 1129(a)(9)(C); 1129(b)(2)(A) (requiring that any plan of reorganization “crammed down” over a class of secured creditors pay those creditors in full or allow those creditors to retain their liens). Authority to pay the Taxes and Fees only affects the timing of the payments and will not unduly prejudice the rights and recoveries of other creditors of the Debtors.

**III. Payment of Taxes and Fees and Undertaking the Tax Planning Activities as Provided Herein is a Sound Exercise of the Debtors’ Business Judgment.**

27. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code support the payment of prepetition claims.

28. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business,



property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

29. Further, pursuant to Bankruptcy Code section 1107(a), “a debtor-in-possession . . . shall perform all the functions and duties . . . of a trustee serving in a case under [chapter 11 of the Bankruptcy Code].” 11 U.S.C. § 1107(a); *see also* 11 U.S.C. § 1108 (authorizing the trustee to operate the debtor’s business). Thus, debtors-in-possession are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of creditors. . . .” *In re CoServ*, 273 B.R. at 497. Courts have noted that there are instances in which a debtor-in-possession may fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.*

30. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential



to the continued operation of a debtor's businesses. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & N. Eng. Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)).

31. The Debtors' timely payment of Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting such key personnel from the administration of these chapter 11 cases. *See, e.g., Schmehl v. Helton*, 662 S.E.2d 697, 707 (W. Va. 2008) (noting that corporate officers may be held responsible for payment of certain corporate taxes); *In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (citing *United States v. Energy Res. Co.*, 495 U.S. 545 (1990)) (stating “[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax” and finding director personally liable for unpaid taxes). Any collection action on account of such amounts, and any potential ensuing liability, would distract the Debtors and



their personnel to the detriment of all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and essential to the orderly administration, and ultimately the success, of these chapter 11 cases.<sup>12</sup>

32. Finally, the Debtors' failure to timely pay Taxes and Fees may result in increased tax liability for the Debtors if interest and penalties accrue on the unpaid Taxes and Fees. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders.

33. For the foregoing reasons, the Court should authorize the Debtors to pay all prepetition and postpetition obligations on account of Taxes and Fees, including any Assessments, and undertake Tax Planning Activities. Courts in this district and elsewhere routinely approve relief similar to that requested herein. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 31, 2023) (authorizing the debtors to pay prepetition taxes and fees in the ordinary course of business); *In re David's Bridal LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (same); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 10, 2020) (same); *In re Modell's Sporting Goods, Inc.*, No. 20-14179 (VFP) (Bankr. D.N.J. June 24, 2020) (same).<sup>13</sup>

#### **The Requirements of Bankruptcy Rule 6003(b) are Satisfied**

34. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into

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<sup>12</sup> Nothing herein is a concession that the Debtors' officers, directors, or employees would have personal liability for unpaid taxes. However, the intent of such collection efforts, even if ultimately unwarranted, would be a critical distraction. In addition, such individuals may be entitled to indemnification by the Debtors' estates which would be an unnecessary cost to incur.

<sup>13</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.



chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The Debtors' payment of Taxes and Fees and Assessments is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

#### **Request of Waiver of Stay**

35. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

#### **Waiver of Memorandum of Law**

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

#### **Reservation of Rights**

37. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute



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

**No Prior Request**

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



**Notice**

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



**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 4, 2023

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed Interim Order**



<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<b>Caption in Compliance with D.N.J. LBR 9004-1(b)</b>	
<b>KIRKLAND &amp; ELLIS LLP KIRKLAND &amp; ELLIS INTERNATIONAL LLP</b> Edward O. Sassower, P.C. ( <i>pro hac vice pending</i> ) Christopher Marcus, P.C. ( <i>pro hac vice pending</i> ) Derek I. Hunter ( <i>pro hac vice pending</i> ) 601 Lexington Avenue New York, New York 10022 Telephone: (212) 446-4800 Facsimile: (212) 446-4900 edward.sassower@kirkland.com christopher.marcus@kirkland.com derek.hunter@kirkland.com  <b>COLE SCHOTZ P.C.</b> Michael D. Sirota, Esq. Warren A. Usatine, Esq. Felice R. Yudkin, Esq. Court Plaza North, 25 Main Street Hackensack, New Jersey 07601 Telephone: (201) 489-3000 msirota@coleschotz.com wusatine@coleschotz.com fyudkin@coleschotz.com  <i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re:  CYXTERA TECHNOLOGIES, INC., <i>et al</i>  Debtors. <sup>1</sup>	Chapter 11  Case No. 23-14853 (JKS)  (Joint Administration Requested)

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<sup>1</sup> 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.



**INTERIM 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 nine (9), is  
**ORDERED.**



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

Case No. 23-14853 (JKS)

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

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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"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim 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, (b) 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 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;

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<sup>2</sup> 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.*  
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(II) Granting Related Relief

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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 [\_\_\_\_], **2023 at [\_\_\_\_] (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 [\_\_\_\_], **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, 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* that, 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



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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.

4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim 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 Interim 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, 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”).



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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 Interim Order and any actions taken pursuant to such relief, nothing in this 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 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 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



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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 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.

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 Interim 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 Interim Order.

12. Notwithstanding anything to the contrary contained in the Motion or this 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 *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,*



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*(IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* filed substantially contemporaneously herewith (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.

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

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

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

16. 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.

17. 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.

18. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

19. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).



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

Case No. 23-14853 (JKS)

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

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



**Exhibit B**

**Proposed Final Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.



**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.**



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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

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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"),<sup>2</sup> 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

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<sup>2</sup> 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.*

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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* that, 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.
3. 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.



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

Case No. 23-14853 (JKS)

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

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

6. The Debtors are authorized, in consultation with the Ad Hoc First Lien Group, 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”).

7. 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.

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

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(II) Granting Related Relief

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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.

9. 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.*

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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.

10. 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.

11. 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* filed substantially contemporaneously herewith (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.

12. 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.*

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

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.



**Exhibit C**

**Authorities**



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Income Taxes	Arizona Department of Revenue	P.O. Box 29085, Phoenix, AZ 85038
Income Taxes	California Franchise Tax Board	P.O. Box 942857, Sacramento, CA 94257
Income Taxes	City of Burbank Building Division	P.O. Box 6459, Burbank, CA 91510-6459
Income Taxes	Department of Revenue Services	P.O. Box 150420, Hartford, CT 06115
Income Taxes	Hillsborough County Tax Collector	P.O. Box 30012, Tampa, FL 33630-3012
Income Taxes	Kentucky Department of Revenue	Kentucky Department of Revenue, Frankfort, KY 40620
Income Taxes	Massachusetts Department of Revenue	P.O. Box 7025, Boston, MA 02204
Income Taxes	Miami-Dade County	200 NW 2nd Avenue, Miami, FL 33128
Income Taxes	Minnesota Department of Revenue	Mail Station 1255 600 N. Robert Street, St. Paul, MN 55146
Income Taxes	New Hampshire Department of Revenue Administration	P.O. Box 1265, Concord, NH 03302
Income Taxes	New Mexico Taxation and Revenue Department	P.O. Box 25127, Santa Fe, NM 87504
Income Taxes	North Carolina Department of Revenue	P.O. Box 25000, Raleigh, NC 27640
Income Taxes	NYC Department of Finance	P.O. Box 3933, New York, NY 10008
Income Taxes	NYS Corporation Tax	P.O. Box 15180, Albany, NY 12212
Income Taxes	Office of Tax and Revenue	P.O. Box 96019, Washington, DC 20090
Income Taxes	Ohio Department of Taxation	P.O. Box 182101, Columbus, OH 43218
Income Taxes	Oklahoma Tax Commission	P.O. Box 26890, Oklahoma City, OK 73126
Income Taxes	Oregon Department of Revenue	P.O. Box 14780, Salem, OR 97309
Income Taxes	Tennessee Department of Revenue Andrew Jackson State Office Building	500 Deaderick St, Nashville, TN 37242
Income Taxes	Texas Comptroller of Public Accounts	P.O. Box 149348, Austin, TX 78714
Income Taxes	Utah State Tax Commission	210 North 1950 West, Salt Lake City, UT 84134
Income Taxes	Virginia Department of Taxation	P.O. Box 1498, Richmond, VA 23218
Income Taxes	Wisconsin Department of Revenue	P.O. Box 3028, Milwaukee, WI 53201
Foreign Taxes	Belastingdienst/Apeldoorn	Postbus 90358 1006 BJ, Amsterdam, Netherlands
Foreign Taxes	Belastingdienst/Apeldoorn	Belastingdienst / Kantoor Hoofddorp Capellalaan 1



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
		2132 JK Hoofddorp, Netherlands
Foreign Taxes	Canada Revenue Agency - Ontario	Sudbury Tax Centre Post Office Box 20000, Station A Sudbury, ON P3A 5C1, Canada
Foreign Taxes	Canada Revenue Agency - Quebec	Prince Edward Island Tax Centre 275 Pope Road Summerside, PE C1N 6A2, Canada
Foreign Taxes	Revenu Quebec	Direction principale des relations avec la clientele des entreprises 3800, rue de Marly Quebec, QC G1X 4A5 Canada
Sales and Use Taxes	Arizona Department of Revenue	P.O. Box 29010, Phoenix, AZ 85038
Sales and Use Taxes	California Department of Tax and Fee Administration	P.O. Box 942879, Sacramento, CA 94279
Sales and Use Taxes	City of Baton Rouge - Parish of East Baton Rouge Dept. of Finance - Revenue Division	P.O. Box 2590, Baton Rouge, LA 70821
Sales and Use Taxes	City of Monroe - Taxation of Revenue Division	P.O. Box 123, Monroe, LA 71210
Sales and Use Taxes	City of New Orleans Department of Finance Bureau of Revenue - Sales Tax	1300 Perdido St., New Orleans, LA 70112
Sales and Use Taxes	City of Seattle - License and Tax Administration	P.O. Box 34907, Seattle, WA 98124
Sales and Use Taxes	Colorado Department of Revenue	Colorado Department of Revenue, Denver, CO 80261
Sales and Use Taxes	Comptroller of Maryland - Revenue Administration Division	110 Carroll Street, Annapolis, MD 21411
Sales and Use Taxes	Comptroller of Public Accounts	P.O. Box 149355, Austin, TX 78714
Sales and Use Taxes	Connecticut Department of Revenue Services	P.O. Box 5030, Hartford, CT 06102
Sales and Use Taxes	Department of Finance & Administration	P.O. Box 3861, Little Rock, AR 72203
Sales and Use Taxes	Department of Taxation	P.O. Box 26627, Richmond, VA 23261
Sales and Use Taxes	Florida Department of Revenue	5050 W Tennessee St, Tallahassee, FL 32399
Sales and Use Taxes	Georgia Department of Revenue	P.O. Box 105408, Atlanta, GA 30348
Sales and Use Taxes	Government of the District of Columbia	P.O. Box 470, Washington, DC 20044
Sales and Use Taxes	Idaho State Tax Commission	P.O. Box 75, Boise, ID 83707



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Sales and Use Taxes	Illinois Department of Revenue	P.O. Box 19009, Springfield, IL 62796
Sales and Use Taxes	Indiana Department of Revenue	P.O. Box 7218, Indianapolis, IN 46207
Sales and Use Taxes	Iowa Department of Revenue	P.O. Box 10412, Des Moines, IA 50306
Sales and Use Taxes	Kansas Department of Revenue	P.O. Box 3506, Topeka, KS 66625
Sales and Use Taxes	Kentucky Department of Revenue	Kentucky Department of Revenue, Frankfort, KY 40620
Sales and Use Taxes	Louisiana Department of Revenue	P.O. Box 3138, Baton Rouge, LA 70821
Sales and Use Taxes	Louisiana Department of Revenue	P.O. Box 201, Baton Rouge, LA 70821
Sales and Use Taxes	Maine Revenue Services	P.O. Box 1064, Augusta, ME 04332
Sales and Use Taxes	Massachusetts Department of Revenue	P.O. Box 419257, Boston, MA 02241
Sales and Use Taxes	Michigan Department of Treasury	P.O. Box 30756, Lansing, MI 48956
Sales and Use Taxes	Minnesota Department of Revenue	P.O. Box 64622, St Paul, MN 55164
Sales and Use Taxes	Mississippi Tax Commission	P.O. Box 960, Jackson, MS 39205
Sales and Use Taxes	Missouri Department of Revenue-Taxation Division	P.O. Box 840, Jefferson City, MO 65105
Sales and Use Taxes	New Mexico Taxation and Revenue Department	P.O. Box 25128, Santa Fe, NM 87504
Sales and Use Taxes	New York State Department of Revenue	P.O. Box 15172, Albany, NY 12212
Sales and Use Taxes	North Carolina Department of Revenue	P.O. Box 25000, Raleigh, NC 27640
Sales and Use Taxes	North Dakota Office of State Tax Commissioner	600 E Boulevard Ave Dept 127, Bismarck, ND 58505
Sales and Use Taxes	Ohio Department of Taxation	P.O. Box 182131, Columbus, OH 43218
Sales and Use Taxes	Oklahoma Tax Commission	P.O. Box 26850, Oklahoma City, OK 73126
Sales and Use Taxes	Pennsylvania Department of Revenue	P.O. Box 280437, Harrisburg, PA 17128
Sales and Use Taxes	South Dakota Department of Revenue	445 E. Capitol Ave., Pierre, SD 57501
Sales and Use Taxes	State of Hawaii - Department of Taxation	P.O. Box 1425, Honolulu, HI 96806
Sales and Use Taxes	State of Nevada - Sales/Use	P.O. Box 51107, Los Angeles, CA 90051
Sales and Use Taxes	State of NJ - Sales and Use Tax	P.O. Box 999, Trenton, NJ 08646
Sales and Use Taxes	State of Rhode Island Division of Taxation	One Capitol Hill- STE 4, Providence, RI 02908
Sales and Use Taxes	State of West Virginia - State Tax Department	P.O. Box 1826, Charleston, WV 25327



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Sales and Use Taxes	Utah State Tax Commission Sales Tax	210 N 1950 W, SLC, UT 84134
Sales and Use Taxes	Vermont Department of Taxes	P.O. Box 547, Montpelier, VT 05601
Sales and Use Taxes	Washington State Department of Revenue	P.O. Box 47464, Olympia, WA 98504
Sales and Use Taxes	Wisconsin Department of Revenue	P.O. Box 8949, Madison, WI 53708
Property Taxes	Bernalillo County Treasurer	P.O. Box 27800, Albuquerque, NM 87125
Property Taxes	City of Waltham Treasurer/Collector's Office	P.O. Box 540190, Waltham, MA 02454
Property Taxes	Cook County Treasurer	P.O. Box 805436, Chicago, IL 60680
Property Taxes	County of Loudoun – Treasurer's Office	P.O. Box 1000, Leesburg, VA 20177
Property Taxes	County of Orange	P.O. Box 1438, Santa Ana, CA 92702
Property Taxes	Delaware County Auditor	145 North Union Street P.O. Box 8006, Delaware, OH 43015
Property Taxes	Douglas County Tax Commissioner	6200 Fairburn Rd, Douglasville, GA 30134
Property Taxes	Douglas County Treasurer	P.O. Box 1208, Castle Rock, CO 80104
Property Taxes	Du Page County Collector	P.O. Box 4203, Carol Stream, IL 60197
Property Taxes	Grant County Treasurer	P.O. Box 37, Ephrata, WA 98823
Property Taxes	King County Treasury	201 S. Jackson Street, Suite 710, Seattle, WA 98104
Property Taxes	Los Angeles County Tax Collector	P.O. Box 54027, Los Angeles, CA 90054
Property Taxes	Los Angeles County Tax Collector	P.O. Box 54018, Los Angeles, CA 90054
Property Taxes	Maricopa County Treasurer's Office	P.O. Box 52133, Phoenix, AZ 85072
Property Taxes	Miami Dade - Tax Collector	200 NW 2nd Avenue, Miami, FL 33128
Property Taxes	Hillsborough County Tax Collector	P.O. Box 30012, Tampa, FL 33630
Property Taxes	Piscataway Twp - Middlesex Co Tax Collector	455 Hoes Lane, Piscataway, NJ 08854
Property Taxes	Santa Clara County - Department of Tax and Collections	70 W Hedding Street, East Wing 6th Floor, San Jose, CA 95110
Property Taxes	Santa Clara County - Department of Tax and Collections	P.O. Box 60534, City of Industry, CA 91716
Property Taxes	Scott County	200 4th Ave W, Shakopee, MN 55379
Property Taxes	Tax Collector of Jersey City	280 Grove Street, Room 101 , Jersey City, NJ 07302
Property Taxes	Weehawken Twp Collector	400 Park Ave, Weehawken, NJ 07087



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Property Taxes	Tarrant County Tax Assessor - Collector	P.O. Box 961018, Fort Worth, TX 76161
Business License Fees	Arizona Department of Revenue	P.O. Box 29032, Phoenix, AZ 85038
Business License Fees	City and County of Denver, Colorado	201 W. Colfax Ave. Department 1009, Denver, CO 80202
Business License Fees	City of Albuquerque Planning Department	600 Second NW, Albuquerque, NM 87102
Business License Fees	City of Aurora Tax & Licensing	P.O. Box 913200, Denver, CO 80291
Business License Fees	City of Chicago	121 N. LaSalle Street, Chicago, IL 60602
Business License Fees	City of Coral Gables Finance Dept. Collection Division	P.O. Box 916020, Orlando, FL 32891
Business License Fees	City of El Segundo	350 Main Street, El Segundo, CA 90245
Business License Fees	City of Sunnyvale	650 West Olive Avenue P.O. Box 3707, Sunnyvale, CA 94088-3707
Business License Fees	City of Vancouver	515 West 10th Avenue, Vancouver, BC Canada V5Z 4A8
Business License Fees	City of Waltham Office of City Clerk	610 Main Street, Waltham, MA 02452
Business License Fees	Colorado Department of Revenue Taxation Division	P.O. Box 17087, Denver, CO 80217-0087
Business License Fees	Commissioner of the Revenue Loudoun County	P.O. Box 8000, Leesburg, VA 20177-9804
Business License Fees	Commonwealth of Pennsylvania Department of Revenue	P.O. Box 280905, Harrisburg, PA 17128-0905
Business License Fees	Douglas County Occupational Tax Department	8700 Hospital Drive 1st Floor, Douglasville, GA 30134
Business License Fees	Illinois Department of Revenue	P.O. Box 19030, Springfield, IL 62794
Business License Fees	Nevada Secretary of State	101 N Carson Street Suite 3, Carson City, NV 89701
Business License Fees	State of Connecticut Department of Revenue Services	450 Columbus Blvd., Suite 1, Hartford, CT 06103
Business License Fees	State of Washington Department of Revenue	P.O. Box 9034, Olympia, WA 98507-9034
Business License Fees	The City of Irvine	1 Civic Center Plaza P.O. Box 19575, Irvine, CA 92623-9575
Business License Fees	The City of Santa Clara Business Tax Unit	1500 Warburton Ave, Santa Clara, CA 95050
Business License Fees	Wisconsin Department of Revenue	P.O. Box 8965, Madison, WI 53708
Regulatory and Other Taxes and Fees	Alabama Secretary of State	RSA Plaza - Suite 580, 770 Washington Avenue, Montgomery, AL 36104
Regulatory and Other Taxes and Fees	Alaska Secretary of State	550 W 7th AVE, STE 1500, Anchorage, AK 99501



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Regulatory and Other Taxes and Fees	American Arbitration Association	120 Broadway, 21st Floor, New York, NY, 10271
Regulatory and Other Taxes and Fees	Arizona Secretary of State	1700 W Washington St Fl 7, Phoenix, AZ 85007
Regulatory and Other Taxes and Fees	Arkansas Secretary of State	Victory Building, 1401 W. Capitol Avenue, Suite 250, Little Rock, AR 72201
Regulatory and Other Taxes and Fees	California Secretary of State	1500 11th Street, Sacramento, CA 95814
Regulatory and Other Taxes and Fees	Colorado Secretary of State	1700 Broadway, Suite 550, Denver, CO 80290
Regulatory and Other Taxes and Fees	Connecticut Secretary of State	165 Capitol Avenue Suite 1000 Hartford, CT 06106
Regulatory and Other Taxes and Fees	DC Secretary of State	1350 Pennsylvania Avenue NW, Suite 419 Washington, DC 20004
Regulatory and Other Taxes and Fees	Delaware Secretary of State	Wilmington Office: 820 N. French St., 10th Floor Wilmington, DE 19801  Dover Office: 401 Federal St., Suite 3 Dover, DE 19901
Regulatory and Other Taxes and Fees	Florida Secretary of State	R.A. Gray Building 500 South Bronough Street Tallahassee, Florida 32399
Regulatory and Other Taxes and Fees	Georgia Secretary of State	214 State Capitol Atlanta, Georgia 30334
Regulatory and Other Taxes and Fees	Hawaii Secretary of State	King Kalakaua Building 335 Merchant Street, Rm. 201 Honolulu, Hawaii 96813
Regulatory and Other Taxes and Fees	Idaho Secretary of State	700 W. Jefferson St., Room E205 Boise, ID 83702
Regulatory and Other Taxes and Fees	Illinois Secretary of State	213 State Capitol Springfield, IL 62756
Regulatory and Other Taxes and Fees	Indiana Secretary of State	200 W. Washington St., Room 201 Indianapolis, IN 46204
Regulatory and Other Taxes and Fees	Iowa Secretary of State	First Floor, Lucas Building 321 E. 12th St. Des Moines, IA 50319
Regulatory and Other Taxes and Fees	Kansas Secretary of State	Memorial Hall, 1st Floor 120 SW 10th Avenue Topeka, KS 66612-1594



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Regulatory and Other Taxes and Fees	Kentucky Secretary of State	700 Capital Avenue Suite 152 Frankfort, KY 40601
Regulatory and Other Taxes and Fees	Louisiana Secretary of State	8585 Archives Ave Baton Rouge, LA 70809
Regulatory and Other Taxes and Fees	Maine Secretary of State	103 Sewall St., 2nd Floor Augusta, ME 04333
Regulatory and Other Taxes and Fees	Maryland Secretary of State	301 W. Preston Street, Room 801 Baltimore, MD 21201-2395
Regulatory and Other Taxes and Fees	Massachusetts Secretary of State	One Ashburton Place Boston, MA 02108
Regulatory and Other Taxes and Fees	Michigan Secretary of State	430 W. Allegan St. Richard H. Austin Building - 4th Floor Lansing, MI 48918
Regulatory and Other Taxes and Fees	Minnesota Secretary of State	First National Bank Building 332 Minnesota Street, Suite N201 Saint Paul, MN 55101
Regulatory and Other Taxes and Fees	Mississippi Secretary of State	125 S. Congress Street Jackson, MS 39201
Regulatory and Other Taxes and Fees	Missouri Secretary of State	600 West Main Street Jefferson City, MO 65101
Regulatory and Other Taxes and Fees	Montana Secretary of State	1301 E 6th Ave Helena, Mt 59601
Regulatory and Other Taxes and Fees	Nebraska Secretary of State	1445 K St Ste 2300 Lincoln, NE 68508
Regulatory and Other Taxes and Fees	Nevada Secretary of State	101 N Carson Street Suite 3, Carson City, NV 89701
Regulatory and Other Taxes and Fees	New Hampshire Secretary of State	107 North Main Street Concord, NH 03301
Regulatory and Other Taxes and Fees	New Jersey Secretary of State	125 W State St Trenton, NJ 08608
Regulatory and Other Taxes and Fees	New Mexico Secretary of State	325 Don Gaspar Ave Ste 300 Santa Fe, NM 87501
Regulatory and Other Taxes and Fees	New York Secretary of State	123 William St Ste 2 New York, NY 10038
Regulatory and Other Taxes and Fees	North Carolina Secretary of State	2 S Salisbury St Raleigh, NC 27601
Regulatory and Other Taxes and Fees	North Dakota Secretary of State	600 E Boulevard Avenue Dept 108 Bismarck ND 58505
Regulatory and Other Taxes and Fees	Ohio Secretary of State	22 North Fourth Street, 16th Floor Columbus, Ohio 43215



<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Regulatory and Other Taxes and Fees	Oklahoma Secretary of State	Colcord Center 421 NW 13th St, Suite 210/220 Oklahoma City, OK 73103
Regulatory and Other Taxes and Fees	Oregon Secretary of State	255 Capitol St. NE, Suite 151 Salem, OR 97310
Regulatory and Other Taxes and Fees	Pennsylvania Secretary of State	401 North St Rm 206 Harrisburg, PA 17120
Regulatory and Other Taxes and Fees	Rhode Island Secretary of State	148 W. River St. Providence, RI
Regulatory and Other Taxes and Fees	South Dakota Secretary of State	500 E Capitol Ave Pierre, SD 57501
Regulatory and Other Taxes and Fees	Tennessee Secretary of State	312 Rosa L Parks Ave Nashville, TN 37243
Regulatory and Other Taxes and Fees	Texas Secretary of State	1019 Brazos St Austin, TX 78701
Regulatory and Other Taxes and Fees	U.S. Department of Commerce International Trade Administration	U.S. Department of Commerce   EU-U.S. & Swiss-U.S. Privacy Shield   1401 Constitution Avenue, N.W.   Room 11018   Washington, D.C. 20230
Regulatory and Other Taxes and Fees	Utah Secretary of State	160 East 300 South (or 160 E Broadway) Salt Lake City, Utah 84111
Regulatory and Other Taxes and Fees	Vermont Secretary of State	128 State St Montpelier, VT 05602
Regulatory and Other Taxes and Fees	Virginia Secretary of State	Office of the Clerk 1st floor 1300 E. Main St. Richmond, Virginia 23219
Regulatory and Other Taxes and Fees	Washington Secretary of State	801 Capitol Way South Olympia, WA 98501
Regulatory and Other Taxes and Fees	West Virginia Secretary of State	1900 Kanawha Boulevard East State Capitol Complex Bldg. 1, Ste. 157-K Charleston, WV 25305
Regulatory and Other Taxes and Fees	Wisconsin Secretary of State	State Capitol Building Room B41W Madison, WI 53703
Regulatory and Other Taxes and Fees	Wyoming Secretary of State	Herschler Building East 122 W 25th St Suites 100 and 101 Cheyenne, WY 82002-0020



This is **Exhibit "GG"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 20\_\_26



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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.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

<sup>1</sup> 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.





**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**

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (the “Motion”)<sup>2</sup> for the relief set forth herein. In support of this Motion, the Debtors respectfully submit the First Day Declaration, the *Declaration of Eric Koza in Support of the 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* (the “Koza Declaration”), and the *Declaration of Ronen Bojmel in Support of the 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*

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration, the Interim Order (as defined herein), the Koza Declaration, or the Bojmel Declaration.



*Hearing, and (VII) Granting Related Relief* (the “Bojmel Declaration”), filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state the following:

### **Introduction**

1. The Debtors commenced these chapter 11 cases with a restructuring support agreement (the “Restructuring Support Agreement”) that enjoys the support of approximately 64 percent of the holders of first lien claims (the “Consenting Lenders”) as well as the support of certain holders of the Company’s outstanding equity interests (the “Consenting Sponsors,” together with the Consenting Lenders, the “Consenting Stakeholders”). The Restructuring Support Agreement contemplates a dual-track process whereby the Debtors can continue their prepetition marketing process (the “Marketing Process”) in-court, while simultaneously pursuing a debt-for-equity plan that may result in their first lien lenders owning 100% of the Debtors’ reorganized equity (the “Recapitalization Transaction”).

2. In early May, it became clear that the Debtors required immediate access to bridge financing to secure additional runway to facilitate an organized chapter 11 filing and to support the continuation of their Marketing Process. Certain of the Consenting Lenders provided emergency bridge financing in the form of a \$50 million new money term loan bridge facility (the “Bridge Facility”), of which \$36 million was drawn by the Debtors before the Petition Date. Following entry into the Restructuring Support Agreement, the Debtors secured commitments from the ad hoc group of first lien lenders represented by Gibson, Dunn & Crutcher LLP as legal counsel and Houlihan Lokey, Inc. as financial advisor (the “Ad Hoc Group”) to provide the proposed \$200 million superpriority senior secured debtor-in-possession financing facility (the “DIP Facility”).

3. The Debtors, with the Guggenheim’s assistance, solicited interest from the market for other DIP financing proposals, but the available alternatives were either not actionable, on less



favorable terms, or both. Accordingly, the Debtors seek approval of the DIP Facility to fund the administration of these chapter 11 cases and to finalize the Debtors' already more than two-months-long Marketing Process. The DIP Facility provides invaluable certainty to the Debtors and their stakeholders at the outset of these chapter 11 cases that they will have the liquidity necessary to finalize the Marketing Process in a thorough, organized fashion, and to ultimately effectuate a reorganization of the Debtors' estates in an orderly and predictable manner.

4. As described in the Koza Declaration, the Debtors have an immediate need for liquidity as they enter these chapter 11 cases with approximately \$40.7 million in cash on hand, which is insufficient to support their global operations during the first 28 days of these chapter 11 cases. Without the DIP Facility, the Debtors would risk being financially unable to meet their obligations in the ordinary course. Accordingly, if approved, the Debtors will use the proceeds of the DIP Facility to, among other things, honor employee wages and benefits, meet lease obligations, fund general and corporate operating needs and the administration of these chapter 11 cases, and provide adequate protection to the Debtors' prepetition credit facility lenders, all in accordance with the initial DIP budget, a copy of which is attached to the Interim Order as Exhibit B (the "Approved Budget").

5. The DIP Facility is the culmination of months of discussions between the Debtors and their various stakeholders regarding the Debtors' path forward. On December 14, 2022, the Debtors retained Guggenheim Securities ("Guggenheim") to help explore various alternatives for their capital structure, which initially included, among other things, the potential refinancing of their existing term loan indebtedness and the execution of a potential capital raise. Over the course of the months that followed, however, it became clear to the Debtors that an in-court process would best address their impending maturities and liquidity constraints. As such, and in light of the



Debtors' overleveraged capital structure, the Debtors and their advisors commenced discussions with the Ad Hoc Group in early 2023 regarding the terms of a value-maximizing, comprehensive restructuring. These discussions bore fruit, ultimately leading to agreement on the terms of the Restructuring Support Agreement.

6. The DIP Facility is a fundamental component of these chapter 11 cases—indeed, the Marketing Process and/or the potential Recapitalization Transaction contemplated under the Restructuring Support Agreement would be impossible without it. With that in mind, in March 2023, the Debtors instructed Guggenheim to engage with various third-party lenders to assess potential interest in providing debtor-in-possession financing while negotiations with respect to the Restructuring Support Agreement remained ongoing. Guggenheim reached out to ten traditional and non-traditional financial institutions to identify the best available solution to the Debtors' financing needs. *See* Bojmel Decl. ¶ 9. Of the ten parties Guggenheim contacted as part of its DIP marketing process, only one was willing to provide debtor-in-possession financing to the Debtors, and only on a priming basis.

7. More specifically, on April 27, 2023, the Debtors received a non-binding senior-secured debtor-in-possession financing proposal from a potential financier, subject to a diligence process. After evaluating this alternative financing proposal, the Debtors, in consultation with their advisors, determined that pursuing the alternative financing proposal was not in the Debtors' best interests—the “priming liens” would have been rejected by the First Lien Lenders and would have led to a value-destructive and challenging postpetition priming fight.

8. On May 11, 2023, the Ad Hoc Group provided the Debtors with an initial DIP term sheet. Following extensive arm's length, good faith negotiations over the course of several weeks, the Debtors and the Ad Hoc Group came to terms on the proposed DIP Facility. The proposed



DIP Facility, if approved, will provide the Debtors with \$150 million of new liquidity for use during the pendency of these chapter 11 cases, of which \$40 million will be made available following entry of the Interim Order, with the remaining \$110 million to be made available for withdrawal following entry of the Final Order. Additionally, the proposed DIP Facility includes a “roll up” component of \$36 million of bridge financing term loans issued to the Debtors shortly before the filing of these chapter 11 cases. Finally, the Company will have access to \$14 million of funds to be released from escrow from the converted Bridge Facility (as defined herein). The Bridge Facility provided critical, emergency financing that allowed the Debtors to avoid an immediate “free fall” chapter 11 filing and instead enter these chapter 11 cases in a smooth and organized manner with the support represented by the Restructuring Support Agreement.

9. The Debtors also seek the Court’s authorization to use Cash Collateral (as defined herein). The nature of the Debtors’ business requires the Debtors to have immediate use of Cash Collateral. Without access to Cash Collateral, the Debtors will be unable to continue their operations and preserve value for the benefit of their estates and stakeholders. *See* Koza Decl. ¶ 12. The Debtors’ prepetition secured lenders have consented to the continued use of Cash Collateral under the terms included in the Interim Order (and as summarized in detail below).

10. Overall, the DIP Facility is the culmination of extensive prepetition negotiations between the Debtors and the DIP Lenders and is the only actionable proposal that the Debtors received. Access to the proposed DIP Facility will: (a) ensure that the Debtors have sufficient funding to complete the Marketing Process and consummate the prearranged plan contemplated by the Restructuring Support Agreement, (b) provide the liquidity to operate uninterrupted during these chapter 11 cases, and (c) send a clear signal to the Debtors’ stakeholders that the Debtors’ business is on the path to improved, sustainable results. *See* Koza Decl. ¶ 13. Further, as set forth



in the Bojmel Declaration, the terms of the DIP Facility are reasonable under the circumstances and were the product of extensive good faith, arm's-length negotiations. *See* Bojmel Decl. ¶ 21.

11. Thus, for the reasons set forth herein, in the First Day Declaration, the Koza Declaration, and the Bojmel Declaration, the Debtors believe that approval of the DIP Facility will maximize the value of the Debtors' estates for the benefit of all of the Debtors' stakeholders and is an exercise of the Debtors' sound business judgment. Accordingly, the Debtors respectfully request that the Court approve the relief requested herein and enter an interim order substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and a final order (the "Final Order," and together with the Interim Order, the "DIP Orders").

#### **Jurisdiction and Venue**

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

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

14. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 4001-3 of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules").



**Relief Requested**

15. By this Motion, the Debtors seek entry of the Interim Order and the Final Order:

- a. authorizing Cyxtera DC Holdings, Inc., in its capacity as borrower (the “DIP Borrower”), to obtain postpetition financing, and for each of the other Debtors to guarantee unconditionally (the Debtors, other than the DIP Borrower, the “DIP Guarantors”) on a joint and several basis, the DIP Borrower’s obligations in connection with a superpriority senior secured term loan credit facility (the “DIP Facility”) in the aggregate principal amount of \$200 million (the “DIP Loans”), consisting of:
  - (i). a new money term loan facility in an aggregate principal amount of \$150 million (the “New Money Loans”) \$40 million of which shall be made available subject to and upon entry of the Interim Order, and \$110 million of which shall be funded into escrow and made available following entry of the Final Order, in each case subject to the terms and conditions set forth in the DIP Orders and the DIP Documents (as defined herein);
  - (ii). upon entry of the Interim Order, “roll up” term loans in an aggregate sum of approximately \$36 million in principal, comprising the aggregate outstanding amount of the Bridge Facility (as defined herein), plus all accrued and unpaid interest, premiums, and fees thereon (the “Roll-Up Loans”); and
  - (iii). upon entry of the Interim Order, a superpriority term loan facility in the principal amount of \$14 million (the “Transferred Loans”), which shall consist of escrowed proceeds funded pursuant to the Debtors’ Bridge Facility (as defined herein), and which shall, upon entry of the Interim Order, be deemed transferred for an equal amount of loans under the DIP Credit Agreement (without accruing any additional or incremental fees related thereto). The Transferred Loan proceeds shall, notwithstanding any provisions or notice requirements under the Debtors’ Bridge Facility or the related escrow agreement, be immediately released from escrow and thereafter be immediately available to the Debtors in accordance with the terms and conditions set forth in the DIP Credit Agreement and all other terms and conditions of the DIP Documents;
- b. approving the terms of, and authorizing the Debtors party thereto to execute and deliver, the DIP Credit Agreement and any other agreements, instruments and documents related thereto (collectively, the “DIP Documents”), and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;



- c. authorizing the Debtors to execute and deliver the DIP Documents, to incur all obligations owing thereunder to the DIP Secured Parties (collectively, the “DIP Obligations”), grant the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in each of these chapter 11 cases and any successor cases, subject to the Carve Out (as defined in the Interim Order) and otherwise perform all of their respective obligations under the DIP Documents;
- d. subject to the Carve Out, granting to the DIP Agent (on behalf of the DIP Secured Parties) automatically perfected security interests in and liens on all of the DIP Collateral (as defined in the Interim Order), including, without limitation, all property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code, (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtors in any deposit or securities account or accounts as of the Petition Date) other than payroll, trust, tax withholding and employee benefit accounts, or accounts located outside of the United States, or any cash or cash equivalents received by the Debtors after the Petition Date as proceeds of the Prepetition Collateral (together, “Cash Collateral”), which liens shall be subject to the priorities set forth herein;
- e. authorizing and directing the Debtors to use proceeds of the DIP Facility and Cash Collateral to: (a) pay the principal, interest, fees, expenses and other amounts payable and reimbursable under the DIP Documents or the Interim Order as such become due, including, without limitation, commitment fees and the fees and disbursements of the DIP Lender Professionals (as defined in the Interim Order); (b) make permitted adequate protection payments; (c) provide financing for working capital and other general corporate purposes, including for bankruptcy-related costs and expenses; and (d) to fund the Carve Out Reserves, all to the extent provided in, and in accordance with, the Approved Budget, the Interim Order and the DIP Documents;
- f. authorizing the Debtors to use the Prepetition Collateral (as defined in the Interim Order), including all property constituting Cash Collateral of the Prepetition Priority/1L Secured Parties under the Prepetition Priority/1L Loan Documents (each term as defined Interim Order) on an interim basis in accordance with both the Approved Budget and the DIP Documents, and providing, among other things, adequate protection to the Prepetition Priority/1L Secured Parties for any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), including resulting from the imposition of the automatic stay, the Debtors’ use, sale, or lease of the Prepetition Collateral, including Cash Collateral (“Diminution in Value”), subject to the restrictions set forth in the DIP Documents and the Interim Order;



- g. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein solely to the extent necessary to permit the Debtors, their affiliates, and the Prepetition Priority/1L Secured Parties implement and effectuate the terms and provisions of the DIP Documents and the Interim Order;
- h. authorizing payment of the certain fees and expenses;
- i. waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order and providing for the immediate effectiveness of the Interim Order;
- j. scheduling a final hearing (the “Final Hearing”) to consider the relief requested herein on a final basis and approving the form of notice with respect to the Final Hearing; and
- k. granting related relief.

**Concise Statement Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-3**

**II. Concise Statement regarding the DIP Facility.**

16. The below chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-3.<sup>3</sup>

<b>Bankruptcy Code</b>	<b>Summary of Material Terms</b>
<b>Borrowers</b> Bankruptcy Rule 4001(c)(1)(B)	Cyxtera DC Holdings, Inc.  <i>See</i> DIP Credit Agreement, Preamble
<b>Guarantors</b> Bankruptcy Rule 4001(c)(1)(B)	Holdings, the Intermediate Parents the Subsidiary Loan Parties, and the Borrower (each as defined in the DIP Credit Agreement).  <i>See</i> DIP Credit Agreement, § 1.01

<sup>3</sup> The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in the following summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the Interim Order, as applicable.



<b>Bankruptcy Code</b>	<b>Summary of Material Terms</b>
<b>Agent</b> Bankruptcy Rule 4001(c)(1)(B)	Wilmington Savings Fund Society, FSB.  <i>See</i> DIP Credit Agreement, § 1.01
<b>DIP Lenders</b> Bankruptcy Rule 4001(c)(1)(B)	The entities listed on Schedule 2.01(b) of the DIP Credit Agreement.  <i>See</i> DIP Credit Agreement, § 1.01
<b>Reporting Information</b> Bankruptcy Rule 4001(c)(1)(B)	The DIP Facility includes standard and customary conditions that require the Borrower to provide periodic reports to the DIP Agent and their respective professionals regarding the Approved Budget, consolidated financial statements of the Borrower, key performance reports, summaries of accounts payable, and certain other matters.  <i>See</i> DIP Credit Agreement, § 5.21(d)
<b>Term</b> Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B)  Local Rule 4001-3	“Maturity Date” means the earliest of:  (i) the date that is 6 months after the Effective Date, as such date may be extended pursuant to Section 2.19,  (ii) the date on which all Loans are accelerated and all unfunded Commitments (if any) have been terminated in accordance with this Agreement, by operation of law or otherwise,  (iii) the date the Bankruptcy Court orders a conversion of the Chapter 11 Cases to a chapter 7 liquidation or the dismissal or termination of the chapter 11 case or the Canadian Recognition Proceeding of any Debtor,  (iv) the closing of any sale of assets pursuant to Section 363 of the U.S. Bankruptcy Code, which when taken together with all other sales of assets since the Effective Date, constitutes a sale of substantially all of the assets of the Loan Parties,  (v) the Plan Consummation Date and  (vi) proceedings under or pursuant to the BIA have been commenced in respect of the Canadian Guarantors unless otherwise consented to in writing by the Required Lenders (which consent may be communicated via an email from either of the Specified Lender Advisors).  <i>See</i> DIP Credit Agreement, § 1.01.
<b>Commitment</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-3	Interim Facility: \$40,000,000;  Roll-Up Loans: \$36,000,000 upon entry of an Interim Order.  Transferred Loans: \$14,000,000 upon entry of an Interim Order.  Funded Escrow Amount: \$110,000,000.  <i>See</i> DIP Credit Agreement § 2.01, 2.02; Interim Order ¶ (i).
<b>Conditions of Borrowing</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-3	The DIP Documents include conditions to closing that are customary and appropriate for similar debtor-in-possession financings of this type.  <i>See</i> DIP Credit Agreement § 4.01.



Bankruptcy Code	Summary of Material Terms
<b>Interest Rates</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-3	8.50% for SOFR Loans and 7.50% for ABR Loans.  <i>See</i> DIP Credit Agreement § 1.01; 2.11.
<b>Use of DIP Financing Facility and Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-3	The Borrower will use the proceeds of the Loans made on the Effective Date to (i) pay fees, interest and other amounts payable under this Agreement, (ii) provide working capital for, and for other general corporate purposes of, the Borrower and its Subsidiaries, including for funding the Carve-Out, the CCAA Administration Charge and payment of any Adequate Protection Obligations, in each case of clauses (i) and (ii), in accordance with, and subject to, the DIP Order and the Approved Budget (subject to any Permitted Variance), and (iii) in the case of the Roll-Up Loans in exchange for (and to satisfy and discharge) Prepetition Priority Loans.  <i>See</i> DIP Credit Agreement § 3.17.
<b>Adequate Protection</b> Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	The adequate protection provided to the Prepetition Priority/1L Secured Parties shall be in accordance with the Interim Order.  <i>See</i> Interim Order ¶ 8.
<b>Roll-Up</b> Local Rule 4001-2(a)(i)(E)	Upon entry of the Interim Order, Roll Up Loans in the principal amount of \$36 million plus accrued and unpaid interest shall be deemed converted into and exchanged for, such Roll-Up Loans.  <i>See</i> DIP Credit Agreement § 2.01; Interim Order ¶ (i)(b).
<b>Budget and Variance Reporting</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-3	The Debtors are permitted to use the proceeds of the DIP Facility and the Cash Collateral in accordance with the Initial DIP Budget, substantially in the form attached to the Interim Order as <u>Exhibit B</u> .  <i>See</i> Interim Order ¶ <u>Exhibit B</u> .
<b>Events of Default</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-3	The DIP Facility contains events of default that are usual and customary for debtor-in-possession financing.  <i>See</i> DIP Credit Agreement § 7.01.
<b>Indemnification</b> Bankruptcy Rule 4001(c)(1)(B)(ix)	The DIP Documents and Interim Order contain indemnification provisions ordinary and customary for DIP financings of this type by the Borrower in favor of the DIP Agent, the DIP Lenders, and each of their respective affiliates and the respective officers, directors, employees, agents, advisors, attorneys and representatives of each of them subject to customary carve-outs.  <i>See</i> DIP Credit Agreement § 9.03; Interim Order ¶ 18.
<b>Entities with Interests in Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(i)	As of the Petition Date, the Prepetition Priority/1L Secured Parties, as defined in the Interim Order, have an interest in Cash Collateral subject to the terms of the DIP Credit Agreement and Interim Order.  <i>See</i> Interim Order ¶ E.(vii).



Bankruptcy Code	Summary of Material Terms
<b>Carve Out</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-3	<p>The Order provide a “Carve Out” of certain statutory fees and allowed professional fees of the Debtors pursuant to section 1103 of the Bankruptcy Code.</p> <p><i>See</i> Interim Order ¶ 9.</p>
<b>Fees</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-3	<p><u>Backstop Fee</u>. The Borrower will pay a backstop fee (the “<u>Backstop Fee</u>”) upon entry of the Interim Order of 6 percent on the \$150 million of new money commitments (the “<u>DIP Commitments</u>”) that will be made available under the DIP Facility;</p> <p><u>Commitment Fee</u>. The Borrower will pay a commitment fee payment payable upon entry of the Interim Order of 3 percent of the DIP Commitments; and</p> <p><u>Maturity Extension Fee</u>. The Borrower will pay a maturity extension fee of 1 percent on each 1-month extension.</p> <p><i>See</i> DIP Credit Agreement § 2.10, 2.19.</p>
<b>506(c) Waiver</b> Bankruptcy Rule 4001(c)(1)(B)(x) Local Rule 4001-3  <b>Section 552(b)</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-3	<p><i>Section 506(c) Claims</i>. Subject to entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Agents, DIP Lenders, or, subject to entry of the Final Order, the Prepetition Priority/1L Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agents, DIP Lenders, or Prepetition Priority/1L Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.</p> <p><i>Section 552(b)</i>. The Prepetition Priority/1L Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to and upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Priority/1L Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral).</p> <p><i>See</i> Interim Order ¶¶ 34, 37.</p>
<b>Liens on Avoidance Actions</b> Local Rule 4001-3	<p>Proceeds from Avoidance Actions shall be subject to liens upon entry of the Final Order.</p> <p><i>See</i> Interim Order ¶ 8</p>
<b>Stipulations to Prepetition Liens and Claims</b> Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-3	<p>After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition Lenders’ claims and liens.</p> <p><i>See</i> Interim Order ¶ E(i)-(v).</p>
<b>Liens and Priorities</b> Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-3	<p>As security for the DIP Obligations, effective and perfected upon the date of the Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clause (a) and (b) below being</p>



Bankruptcy Code	Summary of Material Terms
	<p>collectively referred to as the “DIP Collateral”), subject only to (x) Senior Liens (y) the Carve Out, and (z) the Receivables Liens (as defined in the Receivables Program Order) (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to the Interim Order and the DIP Documents, the “<u>DIP Liens</u>”):</p> <p><i>First Priority Lien On Any Unencumbered Property.</i> Subject only to the Carve Out and the Receivables Program Liens, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority senior security interest in and lien upon all property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (subject to the Carve Out) including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), a 100% equity pledge of all first-tier foreign subsidiaries and all unencumbered assets of the Debtors; all prepetition property and post-petition property of the Debtors’ estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, unencumbered cash (and any investment of such cash) of the Debtors (whether maintained with the DIP Agent or otherwise); all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date); all insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements of the Debtors; all owned real estate, real property leaseholds and fixtures of the Debtors; patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property of the Debtors; all commercial tort claims of the Debtors; and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate (other than Cyxtera Receivables Holdings, LLC) incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing, all products and proceeds of the foregoing and, subject to entry of the Final Order, all proceeds and property recovered in respect of Avoidance Actions (collectively, the “Previously Unencumbered Property”); provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to the Interim Order shall attach to the Debtors’ economic rights, including, without limitation, any and all proceeds of the foregoing.</p> <p><i>Liens Priming the Prepetition Liens.</i> Subject only to the Carve Out, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior priming security interest in and lien upon all property of the Debtors that is subject to the Prepetition Liens, including, without limitation, the Prepetition Collateral and Cash Collateral; provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to the Interim Order shall attach to the Debtors’ economic rights, including, without limitation, any and all proceeds of the foregoing.</p>



Bankruptcy Code	Summary of Material Terms
	<p><i>Liens Junior to Certain Other Liens.</i> Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Debtors immediately junior to the Senior Liens, provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to the Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing.</p> <p><i>See Interim Order ¶ 7.</i></p>
<p><b>Milestones</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-3</p>	<p>Solely in the event the RSA is terminated or expires, the Borrower shall, or shall cause, the actions and events set forth in the RSA to occur by the times and dates set forth therein as of the date the RSA is terminated or expires, as such actions and events may be waived, amended or modified at the Direction of the Required Lenders (each, a "<u>Milestone</u>" and collectively, the "<u>Milestones</u>")</p> <p><i>See DIP Credit Agreement § 5.20.</i></p>
<p><b>Challenge Period</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-3</p>	<p><i>Challenge Period.</i> No later than (a) sixty (60) calendar days following the date of formation of a Committee (if appointed) and (b) 75 calendar days following entry of the Interim Order if no Committee is appointed.</p> <p><i>See Interim Order ¶ 11.</i></p>
<p><b>Waiver/Modification of the Automatic Stay</b> Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p>The automatic stay imposed by section 362 of the Bankruptcy Code is lifted solely to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby, or the DIP Credit Agreement), and to pay all fees (including all amounts owed to the DIP Lenders and the DIP Agent under the DIP Documents and the Escrow Agent under the Escrow Agreement) that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility.</p> <p><i>See Interim Order ¶ 3.</i></p>

### III. The Debtors' Prepetition Capital Structure

17. As of the Petition Date, the Debtors have approximately \$1.02 billion in aggregate outstanding principal and accrued interest for funded debt obligations, as reflected below:



Funded Debt	Maturity	Approximate Principal	Approximate Accrued Interest	Approximate Outstanding Amount
Bridge Facility	May 1, 2024	\$50.0 million	\$0.5 million	\$50.5 million
Revolving Credit Facility	April 2, 2024	\$97.1 million	\$1.1 million	\$98.3 million
2019 First Lien Term Facility	May 1, 2024	\$96.3 million	\$0.8 million	\$97.0 million
2017 First Lien Term Facility	May 1, 2024	\$768.1 million	\$6.0 million	\$774.1 million
<i>Total Funded Debt Obligations:</i>		<i>\$1,011.5 million</i>	<i>\$8.3 million</i>	<i>\$1,019.9 million</i>

#### IV. Funded Indebtedness.

##### A. Term Loan Facilities.

18. The Debtors are party to a first lien term loan credit facility under that certain first lien credit agreement dated as of May 1, 2017 (as amended by that first amendment dated as of April 30, 2018, as further amended by that certain second amendment, dated as of December 21, 2018, as further amended by that certain third amendment, dated as of May 13, 2019, as further amended by that certain fourth amendment, dated as of May 7, 2021, as further amended by that certain fifth amendment, dated as of July 6, 2021, as further amended by Amendment No. 6 (as defined herein), dated as of March 14, 2023, as further amended by Amendment No. 7 (as defined herein), dated as of May 2, 2023, as further amended by Amendment No. 8 (as defined herein), dated as of May 4, 2023, and as may be further amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time) (the “First Lien Credit Agreement”), by and between Cyxtera DC Holdings, Inc. (the “Borrower”), Cyxtera DC Parent Holdings, Inc. (“Holdings”), Cyxtera Communications, LLC (“Cyxtera Communications”), and Cyxtera Data Centers, Inc. (together with Cyxtera Communications and Holdings, the “Guarantors”), the first lien lenders from time to time party thereto (the “First Lien Lenders”), and Citibank, N.A., as administrative agent and collateral agent. Pursuant to the First Lien Credit



Agreement, the Debtors obtained credit facilities of up to \$1.275 billion consisting of: (i) a \$150 million first lien multi-currency revolving credit facility (the “Revolving Credit Facility”); (ii) an \$815 million first lien term loan facility (the “2017 First Lien Term Facility”); and (iii) a second lien credit agreement providing for a \$310 million second lien term loan facility (the “2017 Second Lien Term Facility”). On May 13, 2019, the Debtors borrowed an additional \$100 million in incremental first lien term loans under the First Lien Credit Agreement (the “2019 First Lien Term Facility” and together with the 2017 First Lien Term Facility, the “Term Loan Facilities” and the Term Loan Facilities together with the Revolving Credit Facility, the “First Lien Facilities”). On July 29, 2021, in connection with the de-SPAC, the Debtors repaid the entire balance of the 2017 Second Lien Term Facility.

19. The Term Loan Facilities mature on May 1, 2024, and are secured by liens on the collateral on a senior priority basis by substantially all of the Debtors’ equity interests and material real property. As of the date hereof, an aggregate amount of approximately \$871.1 million in unpaid principal and accrued but unpaid interest is outstanding under the Term Loan Facilities.

**B. Revolving Credit Facility.**

20. 33. The First Lien Credit Agreement also provides the Debtors with a first lien, multi-currency Revolving Credit Facility. As of the Petition Date, the Revolving Credit Facility borrowing base was \$102.1 million with \$4.9 million letters of credit outstanding. Pursuant to Amendment No. 6, the Debtors requested, among other things, that the Revolving Credit Facility be extended and, in connection with such extension, the Debtors agreed to reduce the aggregate extended revolving commitments by 15 percent. The Revolving Credit Facility matures on April 2, 2024, and is secured by liens on the collateral on a senior priority basis by substantially all of the Debtors’ equity interests and material real property. As of the date hereof, an aggregate



of approximately \$97.0 million in unpaid principal and accrued but unpaid interest is outstanding under the Revolving Credit Facility.

**C. Bridge Facility.**

21. On May 4, 2023, and in connection with entry into the Restructuring Support Agreement, the Borrower, Holdings, and the other loan parties and lenders party thereto, and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent for such lenders entered into a first lien priority credit agreement that provided up to \$50 million in new first lien term loans pursuant to the Bridge Facility. The guarantors under the Bridge Facility include the Guarantors under the First Lien Credit Agreement, in addition to Cyxtera Canada TRS, ULC, Cyxtera Canada, LLC, Cyxtera Communications Canada, ULC, Cyxtera Digital Services, LLC, Cyxtera Technology UK Limited, and Cyxtera UK TRS Limited.

22. The Bridge Facility is senior in right of payment to outstanding borrowings under the Term Loan Facilities and is secured on a *pari passu* basis with respect to all collateral securing the Term Loan Facilities. The Bridge Facility matures on the earliest of (i) May 1, 2024, (ii) the date on which the obligations under such facility become due and payable pursuant to the terms of the Bridge Facility, (iii) the effective date of the Debtors' chapter 11 plan, and (iv) the date of consummation of a sale of all or substantially all of any loan party's assets under Section 363 of the Bankruptcy Code. As of the date hereof, an aggregate amount of approximately \$50.5 million in unpaid principal and accrued but unpaid interest is outstanding under the Bridge Facility.

**D. Equipment Finance Leases.**

23. The Company is party to certain equipment leases (the "Equipment Finance Leases") that it enters into, as lessee, buyer, or debtor in relation to the equipment subject thereto. The key structural features of the Equipment Finance Leases are that the relevant lessor leases a specified piece of equipment to the exclusive possession of the Debtors for a definite period of



time (the “Term”) in exchange for rent. The Debtors assume no obligations of outright ownership and have a \$1 buyout option at the end of such Equipment Finance Lease. As of the date hereof, the Company owes an aggregate of approximately \$38.3 million on account of the Equipment Finance Leases.

**E. The Receivables Program.**

24. In 2020, the Company formed a wholly owned bankruptcy remote special purpose entity, Cyxtera Receivables Holdings, LLC (“Cyxtera Receivables Holdings”), to continuously receive, either through the purchase or the contribution of, trade receivables generated by Cyxtera Communications, LLC and Cyxtera Federal Group Inc. on account of their business operations (together, the “Originators,” and the trade receivables the Originators generate, the “Receivables”) pursuant to that certain purchase and sale agreement, dated as of August 31, 2022 (as the same may be amended, amended and restated, or otherwise modified from time to time) (the “Purchase and Sale Agreement”). Accordingly, pursuant to the Purchase and Sale Agreement, the Originators may either sell or contribute Receivables to Cyxtera Receivables Holdings on a daily basis at a fair market discount. Such transactions are either a true sale or an absolute contribution and conveyance of the Receivable by the Originators to Cyxtera Receivables Holdings, providing Cyxtera Receivables Holdings with the full benefits of ownership of the Receivables.

25. Further, Cyxtera Receivables Holdings, as seller, Cyxtera Communications, as Servicer, PNC Bank, National Association (“PNC Bank”), as Administrative Agent, and PNC Capital Markets LLC, as Structuring Agent, are each party to that certain receivables purchase agreement, dated as of August 31, 2022 (as the same may be amended, amended and restated, or otherwise modified from time to time) (the “Receivables Purchase Agreement,” and, together with the Purchase and Sale Agreement, the “Receivables Program”). Pursuant to the Receivables



Purchase Agreement, upon request by Cyxtera Receivables Holdings, PNC Bank makes capital investment payments to Cyxtera Receivables Holdings, subject to certain restrictions.

26. In consideration for PNC Bank's agreement to make such capital investment payments, Cyxtera Receivables Holdings, on the date of each investment payments, sells, assigns, or transfers to PNC Bank, all of Cyxtera Receivables Holdings' newly acquired rights, title, and interest in, to, and under the Receivables designated as sold, including all proceeds and collections with respect thereto. Cyxtera Receivables Holdings then designates certain of the Receivables to be sold by Cyxtera Receivables Holdings to PNC Bank and Cyxtera Receivables Holdings grants a security interest in any remaining, un-sold Receivables to PNC Bank as collateral. Additionally, Cyxtera Receivables Holdings makes certain servicing fee payments to PNC Bank as well as certain other yield and fee payments.

**F. Equity.**

27. Cyxtera Technologies' certificate of incorporation authorizes the board of directors to issue 500 million shares of Class A common stock ("Common Shares") and 10 million shares of preferred stock ("Preferred Shares"). Approximately 180 million Common Shares are outstanding as of the Petition Date. The Common Shares trade on the Nasdaq under the ticker symbol "CYXT." To date, Cyxtera has not issued any Preferred Shares.

**The DIP Facility**

**I. The Debtors' Need for Access to Financing and the Use of Cash Collateral.**

28. As described in the First Day Declaration and in the Koza Declaration, the Debtors require immediate access to the DIP Facility and continued use of Cash Collateral to fund operations, effectuate the Marketing Process, and satisfy the administrative costs of implementing the transactions contemplated by the Restructuring Support Agreement. *See* Koza Decl. ¶ 9. The Debtors' business is cash-intensive, requires the financing provided by the DIP Facility to satisfy



obligations to the Debtors' contract counterparties, landlords, vendors, workforce, and other stakeholders. *See* Koza Decl. ¶ 12.

29. Prior to the Petition Date, the Debtors, in consultation with their proposed restructuring advisor, AlixPartners LLP, reviewed and analyzed their cash needs and prepared near-term and longer-term liquidity forecasts, including the Approved Budget. *See* Koza Decl. ¶ 15. The Debtors believe that the Approved Budget and the projections therein provide a good faith estimate of their funding requirements over the identified period and are reasonable and appropriate under the circumstances. Furthermore, the Debtors relied on these forecasts to determine the amount of postpetition financing required to administer these chapter 11 cases. *Id.*

30. Based on these analyses, the Debtors determined that they would require immediate access to \$40 million in incremental liquidity and access to the full \$150 million in New Money Loans over the pendency of the chapter 11 cases to meet their cashflow needs and to fund these chapter 11 cases. Immediate access to the DIP Facility and Cash Collateral is essential to not only meet working capital and business operating needs, but also to fund the administration of these chapter 11 cases, enabling the Debtors to advance the Marketing Process and either pursue a sale of the Company's assets via the Marketing Process or implement the Recapitalization Transaction. *Id.* at ¶ 6.

31. Therefore, the Debtors believe the DIP Facility is essential to preserve and maximize the value of their estates and responsibly administer these chapter 11 cases.

**A. Alternative Sources of Financing Are Not Available on Better Terms.**

32. It would not be prudent, or even possible, to administer these chapter 11 estates on a cash collateral basis, rendering postpetition financing a necessity. As discussed previously, in light of the Debtors' overleveraged capital structure, the Debtors and their advisors commenced discussions with the Ad Hoc Group beginning in January 2023 regarding the terms of a value-



maximizing, comprehensive restructuring. *See* Bojmel Decl. ¶ 9. These discussions were ultimately successful and on May 4, 2023, the Debtors entered into the Restructuring Support Agreement with the Consenting Stakeholders. *Id.* at ¶ 11.

33. One week later, on May 11, 2023, the Consenting Lenders re-engaged with the Debtors, providing the Debtors with an initial DIP term sheet. As negotiations with the Consenting Lenders progressed, the Debtors continued engaging with third-parties regarding the possible alternative sources of debtor-in-possession financing. In May 2023, the Debtors expanded the scope of their DIP marketing process to four additional financiers. Again, the Debtors discussed both priming and non-priming debtor-in-possession financing structures. In total, of the ten parties Guggenheim contacted in the preceding two months regarding debtor-in-possession financing, only one was willing to provide debtor-in-possession financing to the Debtors, and only on a priming basis. After evaluating this alternative financing proposal, the Debtors, in consultation with their advisors, determined that pursuing the alternative financing proposal was not in the Debtors' best interests—the “priming liens” would have been rejected by the First Lien Lenders and would have led to a value-destructive and challenging postpetition priming fight.

34. Following extensive arm's length, good faith negotiations over the course of several weeks, the Debtors and the certain of the Consenting Lenders (the “DIP Lenders”) came to terms on the proposed \$200 million DIP Facility. The proposed DIP Facility, if approved, will provide the Debtors with \$150 million of new liquidity to use during the pendency of these chapter 11 cases, of which \$40 million will be made available following entry of the Interim Order, and the remaining \$110 million will be made available for withdrawal from escrow following entry of the Final Order. Accordingly, the DIP Facility pending approval before the Court is reasonable



and appropriate under the circumstances and is the Debtors' best—and indeed the only—actionable option. *Id.* at ¶ 12.

35. The DIP Facility is critical to the Debtors' ability to pay the administrative costs of the chapter 11 cases and should provide the Debtors with sufficient liquidity to operate their business without creating a “priming” or valuation dispute at the outset of these chapter 11 cases. The DIP Facility, therefore, will provide a path to emergence that the Debtors believe is important to reassure customers, protect operations, and maximize value for all stakeholders. *See Koza Decl.* ¶ 13.

**B. The DIP Facility is Necessary to Preserve the Value of the Debtors' Estates.**

36. Absent the liquidity infusion to be provided by the DIP Facility, the Debtors would experience significant business disruption, would need to meaningfully curtail their operations, and would face numerous other value-destructive consequences. Simply, cash-on-hand and expected inflows would not be sufficient to fund their operations as a going concern in the near term or for the duration these chapter 11 cases. Without the DIP Facility, the Debtors' business and longstanding customer relationships may be irreparably harmed. Consequently, the DIP Facility is necessary to preserve the value of the Debtors' estates. *Id.*

**Basis for Relief**

**I. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Documents.**

**A. Entry into the DIP Documents Is an Exercise of the Debtors' Sound Business Judgment.**

37. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facility, and use Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a



debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party in interest.”).

38. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of the debtor’s authority under the [Bankruptcy] Code”).

39. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP Lenders, “taken in context, and considering the relative



circumstances of the parties,” the court found them to be reasonable); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. ***Relevant features of the financing must be evaluated, including non economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.*** This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

40. The Debtors’ determination to move forward with the DIP Facility is an exercise of their sound business judgment following an arm’s length process and careful evaluation of available alternatives. *See* Bojmel Decl. ¶ 21. Specifically, the Debtors and their advisors determined that the Debtors would require significant postpetition financing to meet their near-term liquidity needs and to fund these chapter 11 cases. *See* Koza Decl. ¶ 14. Without the Bridge Facility, the Debtors would likely have been forced to commence a “free fall” chapter 11 process in early May, and without the DIP Facility, the Debtors would have insufficient liquidity to smoothly transition into chapter 11 and effectuate the translations contemplated by the Restructuring Support Agreement. *See* Bojmel Decl. ¶ 9. Both forms of financing were and are



absolutely critical to the Debtors' strategy for entering these cases on stable footing. *Id.* at ¶ 7. The DIP Facility will allow the Debtors to: (a) provide working capital for the Debtors; (b) finance interest, fees, expenses, and other costs related to the DIP Facility; (c) make payments in respect of the Carve Out Reserves; (d) support the Marketing Process; (e) satisfy any adequate protection obligations owed under the DIP Orders; and (f) make permissible payments, including, but not limited to, honoring employee wages and benefits and procuring goods and services, all in accordance with a budget agreed to by the Debtors and the DIP Lenders. The Debtors negotiated the DIP Facility and other DIP Documents with the DIP Lenders in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. *See* Bojmel Decl. ¶ 21. Accordingly, the Court should authorize the Debtors' entry into the DIP Credit Agreement, as it is a reasonable exercise of the Debtors' business judgment.

**B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims.**

41. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lenders postpetition security interest in and liens on the DIP Collateral (as defined in the Interim Order) that are valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of the Interim Order.

42. The above-described liens on encumbered and unencumbered assets are common features of postpetition financing facilities and were a necessary feature to provide security for the proposed financings. Indeed, postpetition financing facilities approved in this Circuit and elsewhere routinely are secured by the proceeds of a debtor's unencumbered assets such as leaseholds that are subject to leases that prohibit the impositions of liens thereon. *See, e.g., In re*



*David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D. N.J. May 24, 2023) (approving DIP liens on collateral including any leasehold interests or the proceeds thereof as permitted by applicable law); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D. N.J. Apr. 24, 2023) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (same); *In re Am. Apparel, LLC*, No. 16-12551 (Bankr. D. Del. Dec. 12, 2016) (same); *In re Vestis Retail Grp., LLC*, No. 16-10971 (Bankr. D. Del. Jun. 1, 2016) (same); *In re Quicksilver, Inc.*, No. 15-11880 (Bankr. D. Del. Oct. 28, 2015) (same).

43. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code].” 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

*See In re Los Angeles Dodgers LLC*, 457 B.R. 308 (Bankr. D. Del. 2011); *See In re Ames Dep't Stores*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.



44. As described above and as set forth in the Bojmel Declaration, no third-party lender indicated it would be willing to provide postpetition DIP financing on an unsecured, *pari passu*, or junior-lien basis to the DIP Lenders. *See* Bojmel Decl. ¶ 12. Therefore, the Debtors, in consultation with their advisors, concluded that any workable financing likely would require the support of, or be provided by, the Ad Hoc Group. *Id.* Absent the DIP Facility, which will provide assurances that the Debtors will have sufficient liquidity to administer these chapter 11 cases, the Debtors would likely need to launch a value-destructive, disorderly liquidation of their businesses at the outset of these chapter 11 cases. *See* Koza Decl. ¶ 12. Without postpetition financing, the Debtors lack sufficient funds to operate their enterprise, continue paying their debts as they come due, and cover the projected costs of these chapter 11 cases. *Id.* at 13. Given the Debtors' financial circumstances, the Debtors believe that the terms of the DIP Facility, as set forth in the DIP Documents, are reasonable under the circumstances. For these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

45. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court "may authorize the obtaining of credit or the incurring of debt (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien." As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving a superpriority claim in favor of the DIP Lenders is reasonable and appropriate.



46. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). The Debtors may incur “priming” liens under the DIP Facility if either (a) the Prepetition Priority/1L Secured Parties have consented or (b) Prepetition Priority/1L Secured Parties interest in collateral are adequately protected. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”).

47. Given the Debtors’ current financial position, they are highly unlikely to succeed in demonstrating that the First Lien Lenders are oversecured or that they could otherwise be adequately protected. Yet, even if the Debtors could make such a showing, doing so would likely result in a costly, uncertain, and value-destructive dispute. Here, the First Lien Lenders have consented to having their prepetition liens primed by the postpetition superpriority liens in connection with the DIP Facility. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

**C. No Comparable Alternative to the DIP Facility Is Reasonably Available on More Favorable Overall Terms.**

48. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and



unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

49. As noted above, the Debtors do not believe that a more favorable alternative DIP financing is reasonably available given the realities imposed by the Debtors’ existing capital structure, the Debtors’ lack of significant unencumbered value, and the Debtors’ solicitation of alternative financing proposals. *See* Bojmel Decl. ¶ 18. Thus, the Debtors have determined that the DIP Facility provides the only viable means through which the Debtors can secure mission-critical liquidity in the near term. Simply put, the DIP Facility provides the Debtors with the liquidity they need at the lowest cost available while ensuring that the Debtors have runway to finalize the Marketing Process and either facilitate the sale of assets via the Marketing Process or the Recapitalization Transaction. *See* Koza Decl. ¶ 13. Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

**D. The Repayment Features of the DIP Facility Are Appropriate.**

50. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound



business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor’s use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor’s management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

51. Repayment of prepetition debt (often referred to as a “roll up”) is a common feature in debtor in possession financing arrangements. Courts in this Circuit have approved similar DIP features, including a roll up of prepetition obligations on the first day of the case upon entry of an interim DIP order. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D. N.J. Apr. 24, 2023) (authorizing a \$240 million DIP facility, including a roll up of approximately \$200 million of prepetition principal, pursuant to an interim DIP order); *TPC Group Inc.*, Case No. 22-10493 (CTG) (Bankr. D. Del June 3, 2022) (authorizing a \$323 million DIP facility, including a roll up of \$59.3 million of prepetition principal, pursuant to an interim DIP order); *In re Bluestem Brands*, Case No. 20-10566 (MFW) (Bankr. D. Del Mar. 10, 2020) (authorizing a \$125 million DIP facility, including a roll up of \$45 million of prepetition principal, pursuant to an interim DIP order); *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del March 10, 2020) (authorizing a \$350 million DIP facility, including a roll up of \$75 million of prepetition principal, pursuant to an interim DIP order).<sup>4</sup>

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.



52. Upon entry of the Interim Order, the DIP Facility will roll up \$36 million in indebtedness outstanding under the Bridge Facility. The roll up of funds is a sound exercise of the Debtors' business judgment, is a material component of the DIP Facility, and was required by the DIP Lenders as a condition to their commitments to provide postpetition financing. *See Bojmel Decl.* ¶ 20. The Debtors were unable to obtain DIP financing on similar terms that did not provide for the repayment of prepetition amounts. The DIP Lenders have agreed that the proceeds of the DIP Facility and DIP Collateral (as defined in the Interim Order) may be used, in part, (i) to fund chapter 11 administrative expense claims in connection with the Debtors' goal of confirming a plan of reorganization, and (ii) to fund expenses incurred in connection with the Marketing Process. These commitments are critical to the Debtors' ability to successfully administer these chapter 11 cases and preserve value of their estates for the benefit of all creditors.

53. Furthermore, as discussed above, the DIP Lenders have provided the Company with significant liquidity in the prior months to afford the Company runway to execute on its turnaround plan, despite the possibility of a larger scale restructuring. All of the rolled-up loans are loans made to the Debtors in the weeks immediately prior to the filing; they are not "old money." The Bridge Facility was a "pre-DIP" form of financing because it came at a crucial point while a more comprehensive restructuring was contemplated in the near future. The Debtors used the proceeds of these credit facilities to provide cash for working capital and pay professional fees necessary to facilitate the negotiation of the Restructuring Support Agreement and, ultimately, a value-maximizing chapter 11 restructuring. Simply, without the Bridge Facility, the Debtors would have been forced into a value-destructive "free-fall" emergency chapter 11 filing, the success of which would have been uncertain.



54. Importantly, the roll up will not prejudice any rights a party may otherwise have to challenge the amount, validity, perfection, enforceability, priority, or extent of the debt or liens associated therewith. Pursuant to the procedures set forth in the Interim Order, any official committee appointed in these chapter 11 cases and any other parties in interest have the ability to bring a challenge proceeding in accordance with applicable law. Interim Order ¶ 11. These procedures were developed to ensure that no party in interest would be prejudiced by the relief requested herein and to provide the Court with comfort that any amounts provided on account of the refinancing can be disgorged, refunded, or repaid to the extent the DIP Facility debt or liens are successfully challenged. Given these circumstances, the roll up is a sound exercise of the Debtors' business judgment and should be approved.

## **II. The Debtors Should Be Authorized to Use the Cash Collateral.**

55. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use Cash Collateral with the consent of the secured party. The DIP Lenders and the First Lien Lenders consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

56. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses Cash Collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the "determination of whether there is adequate protection is made



on a case by case basis”); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at \*6 (Bankr. D. Del. Dec. 7, 2012) (same); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at \*14 (Bankr. D.N.J. June 29, 2006) (“the circumstances of the case will dictate the necessary relief to be given”); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992) (“what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis”); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

**A. Adequate Protection Provided to the Prepetition Secured Parties.**

57. As set forth in the Interim Order, the Debtors propose to provide the Prepetition Priority/1L Secured Parties with a variety of adequate protection (the “Adequate Protection Obligations”) to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay, including:

- (a) *Prepetition Priority Adequate Protection Liens.* Solely to the extent of any Diminution in Value of the Prepetition Priority Secured Parties’ interest in Prepetition Priority Collateral, the Prepetition Priority Secured Parties are hereby granted the following as adequate protection additional and replacement, valid, binding, enforceable non-avoidable, and effective and automatically perfected postpetition security interests in and liens on all DIP Collateral upon entry of the Interim Order (the “Prepetition Priority Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, and upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions; subject to the terms of the Interim Order, the Prepetition Priority Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) DIP Liens, (C) any liens granted in connection with the Receivables Program (the “Receivables Program Liens”), and (D) other valid, perfected and unavoidable Senior Liens; and shall otherwise be



senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code); and

- (b) *Prepetition First Lien Adequate Protection Liens.* Solely to the extent of any Diminution in Value of the Prepetition First Lien Secured Parties' interest in Prepetition First Lien Collateral, the Prepetition First Lien Secured Parties are hereby granted the following as adequate protection additional and replacement, valid, binding, enforceable non-avoidable, and effective and automatically perfected postpetition security interests in and liens on all DIP Collateral upon entry of the Interim Order (the "Prepetition First Lien Adequate Protection Liens", and collectively with the Prepetition Priority Adequate Protection Liens, the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, and upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions; subject to the terms of the Interim Order, the Prepetition First Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) DIP Liens, (C) the Prepetition Priority Adequate Protection Liens, (D) the Prepetition First Lien Credit Agreement Liens, (E) the Receivables Program Liens, and (F) other valid, perfected and unavoidable Senior Liens; subject, as applicable to the Priority/1L Intercreditor Agreement; shall be *pari passu* with the Prepetition Priority Adequate Protection Liens; and shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

### **III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Lenders Under the DIP Documents.**

58. Under the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay a 6% backstop fee and a 3% commitment fee on the New Money Loans. *See* Bojmel Decl. ¶ 15.

59. Courts in this district and others have approved similar aggregates in fees in large chapter 11 cases. *See, e.g., In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2022) (approving a commitment fee of approximately 3.0 percent of the DIP loans, a backstop fee of approximately 2.0 percent of the DIP loans, and a fronting premium of approximately 0.50% of



the DIP loans); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (approving a cash fee approximately 2.0 percent of the overall DIP facility); *In re PES Holdings LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 22, 2018) (same); *In re Toys “R” US, Inc.*, No. 17-34665 (KLP) (Bankr. E.D.Va. Sept. 19, 2017) (approving aggregate fees that were just less than 3.0 percent of the overall DIP facility).

60. It is understood and agreed by all parties, that these fees are an integral component of the overall terms of the DIP Facility, and were required by the DIP Lenders as consideration for the extension of postpetition financing. *See* Bojmel Decl. ¶ 20. These fees constitute approximately 9 percent of the \$40 million in initial New Money Loans being provided by the DIP Lenders pursuant to the Interim Order, and there is no fee on account of the Roll-Up Loans. *Id.* at ¶ 15. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

#### **IV. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e).**

61. Section 364(e) of the Bankruptcy Code protects a good-faith lender’s right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

62. As explained herein, in the Bojmel Declaration, the DIP Documents are the result of: (a) the Debtors’ reasonable and informed determination that the DIP Lenders provided the best



postpetition financing alternative available under the circumstances and (b) extended arm's length, good-faith negotiations between the Debtors and the DIP Lenders. *See* Bojmel Decl. ¶ 21. The Debtors submit that the terms and conditions of the DIP Documents are reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

**V. The Automatic Stay Should Be Modified on a Limited Basis.**

63. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order. The proposed Interim Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant liens to the DIP Lenders and to incur all liabilities and obligations set forth in the Interim Order. Finally, the proposed Interim Order provides that, following the occurrence of an Event of Default (as defined in the DIP Credit Agreement) and an appropriate opportunity for the Debtors to obtain appropriate relief from the Court, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Agent to exercise all rights and remedies in accordance with the DIP Documents or applicable law.

64. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g., In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (modifying automatic stay as necessary



to effectuate the terms of the order); *ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (same); *In re In re Charming Charlie, LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 12, 2017) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Dec. 15, 2015) (terminating automatic stay after event of default); *In re Peak Broad., LLC*, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating automatic stay after occurrence of termination event).

**VI. Failure to Obtain Immediate Interim Access to the DIP Facility and Cash Collateral Would Cause Immediate and Irreparable Harm.**

65. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use Cash Collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the Motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

66. For the reasons noted above, the Debtors have an immediate postpetition need to use Cash Collateral and access the liquidity provided by the DIP Facility. The Debtors will use cash to fund the operation of their business for a sufficient amount of time to either conduct an orderly wind-down of their businesses, or to pursue a going-concern sale transaction. Substantially all of the Debtors' available cash constitutes the Cash Collateral of the Prepetition Priority/1L Secured Parties. The Debtors will therefore be unable to operate their business or otherwise fund these chapter 11 cases without access to Cash Collateral and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. *See* Bojmel Decl. ¶ 7. In short, the Debtors' ability to administer these chapter 11 cases through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates.



67. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to receive initial funding under the DIP Facility. The Debtors require the initial funding under the DIP Facility prior to the Final Hearing and entry of the Final Order to continue operating, and to implement the relief requested in the Debtors' other "first day" motions. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

**Request for Final Hearing**

68. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after 28 days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

**Request of Waiver of Stay**

69. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

**Waiver of Memorandum of Law**

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



**No Prior Request**

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

**Notice**

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

*[Remainder of page intentionally blank]*



**WHEREFORE**, the Debtors respectfully request that the Court enter DIP Orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 5, 2023

*/s/ Michael D. Sirota*

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*Proposed Co-Counsel for Debtors and  
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**Exhibit A**

**Interim Order**



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

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

**KIRKLAND & ELLIS LLP**

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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<sup>1</sup> 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.



**INTERIM ORDER  
(I) AUTHORIZING THE  
DEBTORS TO OBTAIN POSTPETITION  
FINANCING, (II) AUTHORIZING THE DEBTORS  
TO USE CASH COLLATERAL, (III) GRANTING LIENS  
AND PROVIDING SUPERPRIORITY ADMINISTRATIVE  
EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION,  
(V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING  
A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

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The relief set forth on the following pages, numbered three (3) through seventy-nine (79),  
is **ORDERED**.



(Page 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (collectively, the “Cases”), pursuant to sections 105, 361, 362, 363, 364, 503, 506(c) (subject to entry of a Final Order), 507, and 552 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1, 4001-2, 4001-3 9013-1, 9013-2, 9013-4, and 9013-5 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the District of New Jersey (the “Court”), seeking entry of this interim order (this “Interim Order”):

(i) authorizing Cyxtera DC Holdings, Inc., in its capacity as borrower (the “DIP Borrower”), to obtain postpetition financing, and for each of the other Debtors to guarantee unconditionally (the Debtors, other than the DIP Borrower, the “DIP Guarantors”) on a joint and several basis, the DIP Borrower’s obligations in connection with a superpriority senior secured term loan credit facility (the “DIP Facility”) in the aggregate principal amount of \$200 million (the “DIP Loans”), consisting of:

(a) New Money Loans. A superpriority senior secured term loan credit facility in the principal amount of \$150 million (the “New Money Commitments” and the term loans made thereunder, the “New Money Loans”), which shall be fully funded upon entry of this Interim Order in accordance with the terms and conditions set forth in the DIP Credit Agreement (as defined below), attached hereto as Exhibit A, of which \$40 million of the New Money Commitments will be immediately disbursed directly to the Debtors upon entry of the Interim Order (the “Interim Facility”), and of which \$110 million of the New Money Commitments will be funded into an escrow account (the “Escrow Account”) of the Borrower upon entry of this Interim Order in accordance with the terms and conditions set forth in the Escrow Agreement;

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<sup>2</sup> Capitalized terms used but not defined herein have the meaning given to such terms in the Motion or the DIP Credit Agreement (as defined herein).



(Page 4)

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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief

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(b) Roll-Up Loans. A superpriority term loan facility in the principal amount of \$36 million plus accrued and unpaid interest on account of the Prepetition Priority Loans (as defined below) (the “Roll-Up Loans”), which Roll-Up Loans shall be deemed fully funded and an equal amount of Prepetition Priority Loans plus accrued and unpaid interest on account of such Prepetition Priority Loans shall be deemed converted into and exchanged for, such Roll-Up Loans, in each case, upon entry of this Interim Order in accordance with the terms and conditions set forth in the DIP Credit Agreement and all other terms and conditions of the DIP Documents. Upon entry of this Interim Order, the Roll-Up Loans shall be deemed to be made by each Lender (as defined in the DIP Credit Agreement) that is a Prepetition Priority Lender (as defined below). On the terms set forth in the syndication procedures (the “Syndication Procedures”), upon entry of the Interim Order, each Prepetition First Lien Lender that has properly executed and returned to counsel to the Debtors (being, Kirkland & Ellis LLP) a signature page to the Restructuring Support Agreement shall be offered the right to purchase DIP Loans (including Roll-Up Loans other than Roll-Up Loans issued in exchange for accrued and unpaid interest with respect to the Prepetition Priority Loans) on a pro rata basis based on their Prepetition First Lien Term Loans and/or Prepetition Revolving Loans;

(c) Deemed Transfer. A superpriority term loan facility in the principal amount of \$14 million (the “Transferred Loans”), which shall consist of escrowed proceeds funded pursuant to the Debtors’ Bridge Facility (as defined in the Motion), and which shall, upon entry of the Interim Order, be deemed transferred for an equal amount of Loans under the DIP Credit Agreement (without accruing any additional or incremental fees related thereto). The Transferred Loan proceeds shall, notwithstanding any provisions or notice requirements under the Debtors’ Bridge Facility or the related escrow agreement, be immediately released from escrow and thereafter be immediately available to the Debtors in accordance with the terms and conditions set forth in the DIP Credit Agreement and all other terms and conditions of the DIP Documents;

(ii) authorizing the DIP Borrower and the DIP Guarantors to (a) enter into and perform under that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of June [6], 2023, among the DIP Borrower, the lenders party thereto (collectively in such capacities, the “DIP Lenders”), and Wilmington Savings Fund Society, FSB, as administrative agent, and collateral agent (in such capacities, the “DIP Agent,” and, together with the DIP Lenders, the “DIP Secured Parties”) (as the same may



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be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP Credit Agreement”) and the other DIP Documents (as defined below) and (b) enter into and perform under that certain Escrow Agreement (the “Escrow Agreement”), dated as of June [6], 2023, among the DIP Borrower, the DIP Agent, and The Bank of New York Mellon, as the initial escrow agent (the “Escrow Agent”); and each of the foregoing, together with this Interim Order, the Final Order, and all agreements, documents, and instruments delivered or executed in connection therewith (including the fee letters executed by the DIP Borrower in connection with the DIP Facility and the Escrow Agreement, and other guarantee and security documentation, collectively, the “DIP Documents”), and to perform such other and further acts as may be required in connection with the DIP Documents;

(iii) authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), (w) to pay fees, interest and other amounts payable under the DIP Documents, (x) solely in accordance with the Approved DIP Budget (subject to any Permitted Variance set forth herein and in the DIP Documents), (y) to effectuate the exchange of Prepetition Priority Loans for Roll-Up Loans in accordance with the DIP Credit Agreement, this Interim Order, and the Final Order, and (z) to provide working capital for, and for other general corporate purposes of, the Debtors and certain of the Debtors’ subsidiaries, including for funding the Carve Out (as defined below) and payment of any Adequate Protection Payments (as defined below) and reasonable and documents transaction costs, fees, and expenses incurred in connection with these Cases, in each case in accordance with the Approved DIP Budget (subject to any Permitted Variance set forth herein and in the DIP Documents);

(iv) authorizing the Debtors to refinance the Roll-Up Loans into DIP Obligations under the DIP Facility;

(v) granting adequate protection to the Prepetition Priority/1L Secured Parties (as defined below);

(vi) granting valid, enforceable, binding, non-avoidable, and fully perfected first priority priming liens on and senior security interests in substantially all of the property, assets, and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and each Debtors’ estate as created by section 541 of the Bankruptcy Code, of any kind or nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined below), subject only to the (x) Carve Out (as defined below) (y) the Receivables Program Liens, and (z) other valid, perfected and unavoidable liens, if any, existing as of the Petition Date that are senior to



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the liens or security interests of the Prepetition Priority/1L Secured Parties as of the Petition Date by operation of law (the “Senior Liens”);

(vii) granting superpriority administrative expense claims against each of the Debtors’ estates to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below) over any and all administrative expenses of any kind or nature (x) subject and subordinate only to the payment of the Carve Out and (y) subject to the Receivables Program Superpriority Claim (which shall rank *pari passu* with the DIP Superpriority Claim) on the terms and conditions set forth herein and in the DIP Documents;

(viii) subject to entry of a Final Order (as defined below), waiving the Debtors’ and the estates’ right to surcharge against the Prepetition Collateral or DIP Collateral (each as defined below) pursuant to section 506(c) of the Bankruptcy Code;

(ix) subject to entry of a Final Order, for the “equities of the case” exception under Bankruptcy Code section 552(b) to not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;

(x) pursuant to Bankruptcy Rule 4001, holding an interim hearing (the “Interim Hearing”) on the Motion before this Court to consider entry of this Interim Order, among other things, (1) authorizing the Debtors to, on an interim basis, borrow from the DIP Lenders a principal amount of \$40 million in DIP Loans, (2) authorizing the DIP Guarantors to guaranty the DIP Obligations, (3) authorizing the Debtors’ use of Prepetition Collateral (including Cash Collateral), (4) granting the adequate protection described in this Interim Order, and (5) authorizing the Debtors to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(xi) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and the entry of a final order (the “Final Order”), and approving the form of notice with respect to the Final Hearing; and

(xii) granting related relief.

B. This Court having considered the Motion, the exhibits thereto, the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter*



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*11 Petitions and First Day Motions* [Docket No. 20] (the “First Day Declaration”), the *Declaration of Eric Koza in Support of the 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 Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. [●]] (the “Koza Declaration”), the *Declaration of Ronen Bojmel in Support of the 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 Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. [●]] (the “Bojmel Declaration”), and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing held on June [6], 2023; and this Court having heard and resolved or overruled any objections, reservations of rights, or other statements with respect to the relief requested in the Motion; and the Court having noted the appearances of all parties in interest; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets; and it appearing that the Debtors’ entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent



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exercise of the Debtors' business judgment; and the Debtors having provided notice of the Motion as set forth in the Motion, and it appearing that no other or further notice of the interim relief granted herein need be given under the circumstances; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. Petition Date. On June 4, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey commencing these Cases. On June [●], 2023, the Court entered an order approving joint administration of the Cases.

B. Debtors in Possession. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. This Court has jurisdiction over these Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Cases and proceedings on the Motion is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.



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D. Committee. As of the date hereof, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “Committee”).

E. Debtors’ Stipulations. Subject only to the rights of parties in interest specifically set forth in paragraph I.11 of this Interim Order (and subject to the limitations thereon contained in such paragraph or otherwise in this Interim Order), the Debtors stipulate and agree that (collectively, paragraphs E(i) through (viii) below are referred to herein as the “Debtors’ Stipulations”):

(i) Prepetition Priority Term Loan Facility.

(a) Prepetition Priority Credit Agreement. Under that certain First-Lien Priority Credit Agreement dated as of May 4, 2023, by and among Cyxtera DC Parent Holdings, Inc. (“Holdings”), the DIP Borrower, as borrower, certain of the Debtors party thereto, as guarantors, the lenders party thereto (collectively, the “Prepetition Priority Lenders”), the other parties thereto, Wilmington Savings Fund Society, FSB, as administrative agent (the “Prepetition Priority Administrative Agent”, and together with the Prepetition Priority Lenders, the “Prepetition Priority Secured Parties”) (such credit agreement, as amended, restated, supplemented, waived or otherwise modified from time to time, the “Prepetition Priority Credit Agreement”, and together with the other “Loan Documents” (as defined in the Prepetition Priority Credit Agreement), the “Prepetition Priority Loan Documents”), the Prepetition Priority Lenders provided loans in an aggregate principal amount of \$50 million (the “Prepetition Priority Loans” and the facility, the



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“Prepetition Priority Term Loan Facility”). As of the Petition Date, the Debtors were jointly and severally indebted to the Prepetition Priority Lenders and the Prepetition Priority Administrative Agent pursuant to the Prepetition Priority Loan Documents, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of \$50 million *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, expenses (including any attorneys’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Loan Document Obligations (as defined in the Prepetition Priority Credit Agreement) owing under or in connection with the Prepetition Priority Loan Documents (collectively, the “Prepetition Priority Obligations”).

(b) *Prepetition Priority Liens and Prepetition Priority Collateral.* As more fully set forth in the Prepetition Priority Loan Documents, prior to the Petition Date, the Prepetition Priority Obligations are secured by first priority liens on and security interest in (the “Prepetition Priority Liens”) certain of the Debtors’ assets and property, including, without limitation, a first priority right of payment with respect to, and security interest in and a continuing lien on, the “Collateral” under and as defined in the Prepetition Priority Loan Documents (collectively, the “Prepetition Priority Collateral”).

(ii) *Prepetition First Lien Credit Facility.*

(a) *Prepetition First Lien Credit Agreement.* Pursuant to that certain First Lien Credit Agreement, dated as of May 1, 2017 (as amended, restated, amended and restated,



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supplemented, waived, or otherwise modified from time to time, the “Prepetition First Lien Credit Agreement,” and collectively with all the Loan Documents (as defined in the Prepetition First Lien Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time, the “Prepetition First Lien Loan Documents”, and collectively with the Prepetition Priority Loan Documents, the “Prepetition Priority/1L Loan Documents”), by and among DIP Borrower, Holdings, the financial institutions from time to time party thereto as Lenders (as defined in the Prepetition First Lien Credit Agreement), Citibank, N.A., as administrative agent (the “Prepetition First Lien Administrative Agent” and together with the Prepetition Priority Administrative Agent, the “Prepetition Priority/1L Administrative Agents”) and as Collateral Agent (the “Prepetition First Lien Collateral Agent”), and the Term Lenders (as defined in the Prepetition First Lien Credit Agreement) from time to time party thereto (collectively, the “Prepetition First Lien Term Loan Lenders”) and the Revolving Lenders (as defined in the Prepetition First Lien Credit Agreement) party thereto (collectively, the “Prepetition Revolving Lenders”, and together with the Prepetition First Lien Term Loan Lenders, the “Prepetition First Lien Lenders”, and collectively with the Prepetition Priority Lenders, the “Prepetition Lenders”), the Prepetition First Lien Term Loan Lenders provided term loans and other financial accommodations to the DIP Borrower (the “Prepetition First Lien Term Loans”) and the Prepetition Revolving Lenders provided revolving loans and other financial accommodations to the DIP Borrower (the “Prepetition Revolving Loans”, and together with the



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Prepetition First Lien Term Loans, the “Prepetition First Lien Facility,” and together with the Prepetition Priority Loans, the “Prepetition Priority/1L Facilities”). As of the Petition Date, the Debtors were jointly and severally indebted to the Prepetition First Lien Lenders and the Prepetition First Lien Administrative Agent (collectively, the “Prepetition First Lien Secured Parties,” and together with the Prepetition Priority Secured Parties, the “Prepetition Priority/1L Secured Parties”) pursuant to the Prepetition First Lien Loan Documents, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of \$961,496,926 *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, expenses (including any attorneys’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Loan Document Obligations (as defined in the Prepetition First Lien Credit Agreement) owing under or in connection with the Prepetition First Lien Loan Documents (collectively, the “Prepetition First Lien Obligations,” and together with the Prepetition Priority Obligations, the “Prepetition Obligations”). The Prepetition Priority Lenders and the Prepetition First Lien Lenders are collectively referred to herein as the “Prepetition Priority/1L Secured Lenders.” Pursuant to the Guarantee Agreements (as defined in the Prepetition First Lien Credit Agreement), the Debtors, comprising the Guarantors (as defined in the Prepetition First Lien Credit Agreement), guaranteed on a joint and several basis the obligations of the DIP Borrower under the Prepetition First Lien Credit Agreement and the other Prepetition First Lien Loan Documents.



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(b) *Prepetition First Lien Credit Agreement Liens and Prepetition First Lien Collateral.* As more fully set forth in the Prepetition First Lien Loan Documents, the Prepetition First Lien Obligations are secured by first priority liens on and security interests in (the “Prepetition First Lien Credit Agreement Liens,” and together with the Prepetition Priority Liens, the “Prepetition Liens”) certain of their assets and property, including, without limitation, a first priority security interest in and a continuing lien on the “Collateral” under and as defined in the Prepetition First Lien Loan Documents (collectively, the “Prepetition First Lien Collateral”, and together with the Prepetition Priority Collateral, the “Prepetition Collateral”).

(iii) *Priority of Prepetition Liens; Intercreditor Agreements.* The Prepetition Priority Administrative Agent and the Prepetition First Lien Administrative Agent, among others, are parties to that certain First Lien Intercreditor Agreement, dated as of May 4, 2023 (as may be further amended, restated, supplemented, or otherwise modified in accordance with its terms, the “Priority/1L Intercreditor Agreement”) to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Priority/1L Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Debtors acknowledged and agreed to the Priority/1L Intercreditor Agreement.

(iv) *Validity, Perfection and Priority of Prepetition Priority Liens and Prepetition Priority Obligations.* The Debtors represent, acknowledge and agree that, as of the Petition Date, (a) the Prepetition Priority Liens on the Prepetition Priority Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit



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of, the Prepetition Priority Secured Parties for fair consideration and reasonably equivalent value;

(b) subject to and as provided in the Priority/1L Intercreditor Agreement, the Prepetition Priority Liens were *pari passu* with the Prepetition First Lien Credit Agreement Liens, and senior in priority over any and all other liens on the Prepetition Collateral, subject only to Senior Liens,

(c) subject to and as provided in the Priority/1L Intercreditor Agreement, the Prepetition Priority Liens were senior in right to payment in respect of the Prepetition Collateral and the Prepetition Priority Secured Parties were senior in all respects over any and all rights to payment in respect of the Prepetition Collateral (including such rights to payment arising from the Prepetition First Lien Credit Agreement Liens) other than rights to payment arising from any Senior Liens; (d) the Prepetition Priority Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Priority Loan Documents; (e) no offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Priority Liens or Prepetition Priority Obligations exist, and no portion of the Prepetition Priority Liens or Prepetition Priority Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (f) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Priority Secured Parties, or any of their



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respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Priority Loans; (g) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Priority Obligations, the priority of the Prepetition Priority Obligations, and the validity, extent, and priority of the Prepetition Priority Liens; and (h) the Prepetition Priority Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(v) *Validity, Perfection and Priority of Prepetition First Lien Credit Agreement Liens and Prepetition First Lien Obligations.* The Debtors represent, acknowledge and agree that, as of the Petition Date, (a) the Prepetition First Lien Credit Agreement Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition First Lien Secured Parties for fair consideration and reasonably equivalent value; (b) subject to and as provided in the Priority/1L Intercreditor Agreement, the Prepetition First Lien Credit Agreement Liens were *pari passu* with the Prepetition Priority Liens and senior in priority over any and all other liens on the Prepetition Collateral, subject only to Senior Liens, (c) subject to and as provided in the Priority/1L Intercreditor Agreement, the Prepetition First Lien Credit Agreement Liens were junior to the Prepetition Priority Liens in the right to payment in respect of the Prepetition Collateral and the Prepetition First Lien Secured Parties were junior in all respects to the Prepetition Priority Secured Parties' rights to payment arising from the Prepetition Priority Liens; (d) the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors



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enforceable in accordance with the terms of the applicable Prepetition First Lien Credit Documents; (e) no offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition First Lien Credit Agreement Liens or Prepetition First Lien Obligations exist, and no portion of the Prepetition First Lien Credit Agreement Liens or Prepetition First Lien Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (f) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition First Lien Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition First Lien Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition First Lien Obligations, the priority of the Prepetition First Lien Obligations, and the validity, extent, and priority of the Prepetition First Lien Credit Agreement Liens; and (g) the Prepetition First Lien Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(vi) No Control. None of the DIP Agents, the DIP Lenders or the Prepetition Priority/1L Secured Parties controls the Debtors or their operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of



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the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order, the DIP Facility, the DIP Documents, the Prepetition Priority/1L Facilities, and/or the Prepetition Priority/1L Loan Documents.

(vii) Cash Collateral. Any and all of the Debtors' cash, including the Debtors' cash and other amounts on deposit or maintained in any banking, checking, or other deposit accounts by the Debtors, any amounts generated by the collection of accounts receivable (except to the extent sold or contributed to, or otherwise encumbered with respect to the Receivables Program)<sup>4</sup> or other disposition of the Prepetition Collateral existing as of the Petition Date or deposited into the Debtors' banking, checking, or other deposit accounts after the Petition Date, and the proceeds of any of the foregoing is the Prepetition Priority/1L Secured Parties' cash collateral within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

(viii) Bank Accounts. The Debtors acknowledge and agree that as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system (the "Cash Management Order").

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<sup>4</sup> "Receivables Program" has the meaning ascribed to the term in the *Interim Order (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* (the "Receivables Program Order").



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Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief

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F. *Findings Regarding the DIP Facility and Use of Cash Collateral.*

(i) The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral (solely to the extent consistent with the Approved DIP Budget, subject to any Permitted Variance set forth herein and in the DIP Documents) to, among other things, permit the orderly continuation of their operations and administer and preserve the value of their estates. The proceeds of the New Money Loans will enable the Debtors to fund day to day operations and meet administrative obligations during the Cases. The DIP Facility will also reassure the Debtors' customers and employees that the Debtors will have access to additional liquidity to meet its commitments during the Cases and that the Debtors' businesses are likely to continue as a going concern post-emergence. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern value and successful reorganization. The Debtors will not have sufficient available sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Cases without access to the DIP Facility and authorized use of Cash Collateral, and subject to the Carve Out as provided herein.

(ii) The Debtors have been unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and have been unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also are unable to obtain (a) unsecured credit solely having priority over that of



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administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, and (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not otherwise available without the Debtors granting to the DIP Secured Parties the DIP Liens (as defined below) and the DIP Superpriority Claims (as defined below) under the terms and conditions set forth in this Interim Order and the DIP Documents.

(iii) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other obligations under the DIP Documents (collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Secured Parties in good faith as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted to, or payments made to, the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions



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of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

(iv) Roll Up of Loans. Upon entry of this Interim Order, without any further action by the Debtors or any other party, the Prepetition Priority Loans shall be converted into DIP Obligations, as Roll-Up Loans. Such conversion (or “Roll-Up”) shall be authorized as compensation for, in consideration for, and solely on account of, those Prepetition Priority Lenders that are also DIP Lenders or affiliates thereof to fund the New Money Loans and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The Prepetition Priority/1L Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Lenders would not be willing to provide the DIP Loans or extend credit to the Debtors thereunder without the inclusion of the Roll-Up Loans in the DIP Obligations.

(v) Adequate Protection. Each of the Prepetition Priority/1L Secured Parties are entitled, pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including Cash Collateral, for any diminution in the value thereof.

(vi) Sections 506(c) and 552(b). In light of the Prepetition Priority/1L Secured Parties’ agreement to subordinate their liens and superpriority claims to the DIP Obligations and the Carve Out and to permit the use of their Cash Collateral as set forth herein, subject to and upon entry of the Final Order, the Prepetition Priority/1L Secured Parties are entitled to the rights and



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benefits of section 552(b) of the Bankruptcy Code, and a waiver of any “equities of the case” claims under section 552(b) of the Bankruptcy Code, and a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(vii) Consent by Prepetition Priority/1L Administrative Agents. The Prepetition Priority/1L Administrative Agents (at the direction of the applicable required lenders), on behalf and for the benefit of each of the Prepetition Priority/1L Secured Parties, have consented to, conditioned on the entry of this Interim Order, the Debtors’ incurrence of the DIP Facility, and proposed use of Cash Collateral on the terms and conditions set forth in this Interim Order, including, without limitation, the terms of the adequate protection provided for in this Interim Order, subject and subordinate to the Carve Out.

G. Good Cause Shown; Best Interest. Good cause has been shown for entry of this Interim Order, and entry of this Interim Order is in the best interests of the Debtors’ respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors’ existing business and enhance the Debtors’ prospects for a successful reorganization. Absent granting the relief sought by this Interim Order, the Debtors’ estates will be immediately and irreparably harmed.

H. Notice. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of



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the Motion, the relief requested herein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and applicable Local Rules.

I. *Arm's Length, Good Faith Negotiations.* The terms of this Interim Order were negotiated in good faith and at arm's length between the Debtors and the Prepetition Priority/1L Secured Parties. The Prepetition Priority/1L Secured Parties have acted without negligence or violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the Debtors' incurrence of the DIP Facility and the Debtors' use of Cash Collateral, including in respect of all of the terms of this Interim Order, all documents related thereto, and all transactions contemplated by the foregoing.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. DIP Financing Approved. The Motion is granted on an interim basis as set forth herein, and the Debtors' incurrence of the DIP Facility and use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2. Objections Overruled. Any objections, reservations of rights, or other statements with respect to the Motion and entry of this Interim Order, to the extent not withdrawn or resolved, are overruled on the merits. This Interim Order shall become effective immediately upon its entry.



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3. Authorization of the DIP Facility and the DIP Documents.

(a) The DIP Borrower and the DIP Guarantors are hereby immediately authorized and empowered to enter into, and execute and deliver, the DIP Documents, including the DIP Credit Agreement, and such additional documents, instruments, certificates and agreements as may be required or requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents, and to effectuate the exchange of Prepetition Priority Loans for Roll-Up Loans. To the extent not entered into as of the date hereof, the Debtors and the DIP Secured Parties shall negotiate the DIP Documents in good faith, and in all respects such DIP Documents shall be, subject to the terms of this Interim Order and the Final Order, consistent with the terms of the DIP Credit Agreement and otherwise reasonably acceptable to the DIP Agent (acting at the direction of the required lenders under and pursuant to the DIP Credit Agreement (the “Required DIP Lenders”)) and the Required DIP Lenders. Upon entry of this Interim Order and until execution and delivery of the DIP Credit Agreement and other DIP Documents required to be delivered thereunder, the Debtors and the DIP Secured Parties shall be bound by (x) the terms and conditions and other provisions set forth in the other executed DIP Documents (including the fee letters executed in connection with the DIP Facility), with the same force and effect as if duly executed and delivered to the DIP Agent by the Debtors, and (y) this Interim Order and the other executed DIP Documents (including the fee letters executed in connection with the DIP Facility) shall govern and control the DIP Facility. Upon entry of this Interim Order, the Interim Order, the DIP Credit Agreement, and other DIP



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Documents shall govern and control the DIP Facility. The DIP Agent is hereby authorized to execute and enter into its respective obligations under the DIP Documents, subject to the terms and conditions set forth therein and this Interim Order. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms. To the extent there exists any conflict among the terms and conditions of the Motion, the DIP Documents and this Interim Order, the terms and conditions of this Interim Order shall govern and control. To the extent there is a conflict between the terms and conditions of the Motion and the DIP Documents, the terms and conditions of the DIP Documents shall govern.

(b) Upon entry of this Interim Order, the DIP Borrower is hereby authorized to borrow, and the DIP Guarantors are hereby authorized to guaranty, borrowings up to an aggregate principal amount of \$200 million in DIP Loans, with \$54 million available to be drawn on an interim basis (including the Transferred Loan amounts), subject to and in accordance with this Interim Order, without any further action by the Debtors or any other party.

(c) Upon the entry of this Interim Order, without any further action by the Debtors or any other party, the Debtors shall be authorized and deemed to have effectuated the exchange of Prepetition Priority Loans for Roll-Up Loans, subject to the occurrence of the Closing Date (as defined in the DIP Credit Agreement).

(d) In accordance with the terms of this Interim Order and the DIP Documents, proceeds of the DIP Loans shall be used for the purposes permitted under the DIP Documents and



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this Interim Order, and solely in accordance with the Approved DIP Budget, subject to any Permitted Variance as set forth herein and the DIP Documents. Attached as **Exhibit B** hereto and incorporated herein by reference is a budget prepared by the Debtors and approved by the Required DIP Lenders in accordance with section 5.21 of the DIP Credit Agreement (the “Initial DIP Budget”).

(e) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted solely to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby, or the DIP Credit Agreement), and to pay all fees (including all amounts owed to the DIP Lenders and the DIP Agent under the DIP Documents and the Escrow Agent under the Escrow Agreement) that may be reasonably required or necessary for the Debtors’ performance of their obligations under the DIP Facility, including, without limitation:

- (1) the execution, delivery, and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent required thereby;
- (2) the execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Documents (in each case in accordance with the terms of the applicable DIP Documents



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and in such form as the Debtors, the DIP Agent, and the Required DIP Lenders may reasonably agree), it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the DIP Documents or the DIP Obligations that are not material; provided, that, any such non-material amendment shall be provided to the U.S. Trustee and counsel for the Committee to the extent one has been appointed at such time;

- (3) the non-refundable payment to each of and/or on behalf of the DIP Secured Parties, as applicable, of the fees referred to in the DIP Documents, including (x) all fees and other amounts owed to the DIP Agent and the DIP Lenders and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order (whether incurred before or after the Petition Date), including, for the avoidance of doubt, (a) Gibson, Dunn & Crutcher LLP (as counsel), Houlihan Lokey Capital, Inc., (as financial advisor), Gibbons P.C. (as local bankruptcy counsel), and any other foreign counsel and other professionals necessary to represent the interests of the DIP Lenders and the ad hoc group of the Prepetition Priority/1L Secured Lenders (the “DIP/First Lien Group”)



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in connection with the Cases (collectively, the “DIP/First Lien Advisors”); and (b) ArentFox Schiff LLP (as counsel), and Riker Danzig LLP (as local bankruptcy counsel) to the DIP Agent, and, to the extent necessary to exercise its rights and fulfill its obligations under the DIP Documents, which such fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court, provided that any fees and expenses of a professional shall be subject to the provisions of paragraph 18 of this Interim Order; and

(4) the performance of all other acts required under or in connection with the DIP Documents, including, without limitation, pursuant to the Escrow Agreement.

(f) Upon entry of this Interim Order, such DIP Documents, the DIP Obligations, and the DIP Liens shall constitute valid, binding, and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Interim Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents, or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation,



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under sections 502(d), 544, 547, 548, 549, 550, or 551 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim. All payments or proceeds remitted (a) to or on behalf of the DIP Agent on behalf of any DIP Secured Parties or (b) to or on behalf of the Prepetition Priority/1L Secured Parties, in each case, pursuant to the DIP Documents, the provisions of this Interim Order, or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code (and, solely in the case of waivers of rights under sections 506(c) (as to the Prepetition Priority/1L Secured Parties) and the “equities of the case” exception of section 552(b), subject to the entry of the Final Order). For the avoidance of doubt, and notwithstanding anything to the contrary in any Prepetition Priority/1L Loan Documents, DIP Document, any additional document, instrument, certificate and/or agreement related to any of the foregoing, in no event shall any property, proceeds, cash, cash equivalents, or otherwise placed or held in the escrow account established pursuant to the Escrow Agreement at any time be, or be deemed to be, property of any of the Debtors or their affiliates or subsidiaries or any of the Debtors’ estates and the parties to the Escrow Agreement have acknowledged and agreed to the foregoing.



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(g) The DIP Guarantors are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrower.

4. Budget and Variance Reporting.

(a) On or before the Thursday before the end of each Budget Period (as defined below) or sooner, beginning with the fourth full week following the Petition Date (or more frequently if determined by the Debtors), the Debtors will deliver to the Prepetition Priority/1L Administrative Agents and the DIP/First Lien Advisors an updated Budget for the subsequent 13-week period (a “Subsequent DIP Budget”), which shall be in form and substance reasonably satisfactory to the Required DIP Lenders in their sole discretion. The Initial DIP Budget or any Subsequent DIP Budget shall be deemed to constitute the “Approved DIP Budget” for purposes of this Interim Order with the most recently delivered Budget constituting the “Approved DIP Budget” solely upon approval by the Required DIP Lenders (which must be in writing, email being sufficient, or which shall be deemed an Approved DIP Budget absent objection by the Required DIP Lenders within five days’ after delivery of the Budget) in their sole discretion. In the event the conditions for the most recently delivered Subsequent DIP Budget to constitute an “Approved DIP Budget” are not met as set forth herein, the prior Approved DIP Budget shall remain in full force and effect and the Debtors shall be required to work in good faith with the Required DIP Lenders to modify such Subsequent DIP Budget until the Required DIP Lenders approve such Subsequent DIP Budget as an “Approved DIP Budget.” “Budget Period” means the initial four-



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week period set forth in the Approved DIP Budget in effect at such time. Any such Approved DIP Budget and Subsequent DIP Budgets shall be served on the U.S. Trustee and counsel to the Committee.

(b) Commencing on the Friday of the second full calendar week after the Petition Date, Budget Variances (as defined below) shall be tested bi-weekly on Friday (each such date, a “Testing Date”). If such Testing Day is not a Business Day, the Testing Date shall be the next day that is a Business Day. On or before the following Thursday after each Testing Date, the Debtors shall deliver to the DIP Agent, the DIP/First Lien Advisors counsel to the Committee, and the U.S. Trustee a budget variance report/reconciliation in form and substance reasonably satisfactory to the DIP/First Lien Group (the “Approved DIP Budget Variance Report”), setting forth in detail (i) the Debtors’ actual disbursements (the “Actual Disbursements”), including, without limitation, capital expenditures, and all disbursements related to the Cases, including, without limitation, the fees and expenses of Professional Persons (as defined below), on a line-by-line and aggregate basis for the trailing four-week and two-week period preceding the applicable Testing Date and covering the Budget Period as of the applicable Testing Date; (ii) the Debtors’ actual ordinary course receipts (the “Actual Receipts”), excluding, for the avoidance of doubt, any intercompany transactions, on a line-by-line and aggregate basis during the week period preceding the applicable Testing Date and covering the Budget Period as of the applicable Testing Date; (iii) a comparison (whether positive or negative, in dollars and expressed as a percentage) for the prior period of the Actual Receipts (and each line item thereof), the Actual Disbursements (and



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each line item thereof), and the fees and expenses of Professional Persons for such prior period to the amount of Debtors' projected cash receipts (and each line item thereof) set forth in the Approved DIP Budget for such prior period and the Debtors' projected disbursements (and each line item thereof), respectively, set forth in the Approved DIP Budget for such prior period; and (iv) as to each variance contained in the Approved DIP Budget Variance Report, an indication as to whether such variance is temporary or permanent and an analysis and explanation in reasonable detail for any variance.

(c) The Debtors shall not permit: (i) during any Budget Period, the Debtors' Actual Disbursements for any trailing four-week period during such Budget Period to be more than 15% of the projected disbursements (x) in the aggregate and (y) with respect to capital expenditures, specifically, in each case for such period in the Approved DIP Budget (including any Subsequently Delivered DIP Budget that has become an Approved DIP Budget) over such period; and (ii) during any Budget Period, the Debtors' Actual Receipts for any trailing four-week period during such Budget Period to be less than 15% of the projected receipts in the aggregate for such period in the Approved DIP Budget (including any Subsequently Delivered DIP Budget that has become an Approved DIP Budget) over such period (the "Budget Variances"; all references in this Interim Order and the DIP Documents to "Approved DIP Budget" shall mean the Approved DIP Budget as it is subject to the Budget Variances). Commencing with the first full calendar week after the Petition Date, the Debtors shall maintain Actual Liquidity (as defined in the DIP Credit Agreement) of not less than \$30,000,000 as of the last business day of every other calendar



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week. For purposes of Budget Variances testing, the fees and expenses of Professional Persons and the DIP/First Lien Advisors, capital expenditures, and payments in connection with vendor-related motions shall be excluded.

5. Access to Records. The Debtors shall provide the DIP/First Lien Advisors with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Documents, upon reasonable notice to counsel to the Debtors (email being sufficient), at reasonable times during normal business hours, the Debtors shall permit the Required DIP Lenders, and upon the occurrence, and during the continuance of an Event of Default, representatives, agents, and employees of the Required DIP Lenders to have reasonable access to (i) inspect the Debtors' assets, and (ii) reasonably requested information (including historical information and the Debtors' books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtors and, as appropriate, other advisors of the Debtors (during normal business hours), and the DIP Secured Parties shall be provided with access to all information they shall reasonably request, excluding any information subject to attorney-client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law or any binding agreement that would violate confidentiality obligations.



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6. DIP Superpriority Claims. Subject to, and subordinated in all respects to, the Carve Out, and subject to the Receivables Program Superpriority Claims<sup>5</sup> at the applicable Debtor (which shall rank *pari passu* with the DIP Superpriority Claims), pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, subject to entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under

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<sup>5</sup> "Receivables Program Superpriority Claims" has the meaning ascribed to the term "Superpriority Claims" in the Receivables Program Order.



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Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief

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chapter 5 of the Bankruptcy Code, if any (the “Avoidance Actions”). Except as set forth in this Interim Order, the Final Order, or any order authorizing the Debtors to continue the Receivables Program, no other superpriority claims shall be granted or allowed in these Cases.

7. DIP Liens. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clause (a) and (b) below<sup>6</sup> being collectively referred to as the “DIP Collateral”), subject only to (x) Senior Liens (y) the Carve Out, and (z) the Receivables Liens (as defined in the Receivables Program Order) (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”):

(a) First Priority Lien On Any Unencumbered Property. Subject only to the Carve Out and the Receivables Program Liens, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and

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<sup>6</sup> For the avoidance of doubt, DIP Collateral excludes: (a) any and all accounts receivable sold or contributed to, or otherwise encumbered in favor of, Cyxtera Receivables Holdings (and its assignee) pre- and post-petition, (b) any claims arising on account of transfers to Cyxtera Receivables Holdings, and (c) any equity or membership interest in the non-Debtor Cyxtera Receivables Holdings.



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properly perfected first priority senior security interest in and lien upon all property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (subject to the Carve Out) including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), a 100% equity pledge of all first-tier foreign subsidiaries and all unencumbered assets of the Debtors; all prepetition property and post-petition property of the Debtors' estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, unencumbered cash (and any investment of such cash) of the Debtors (whether maintained with the DIP Agent or otherwise); all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date); all insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements of the Debtors; all owned real estate, real property leaseholds and fixtures of the Debtors; patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property of the Debtors; all commercial tort claims of the Debtors; and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from a Debtor



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to (x) another Debtor and (y) a non-Debtor affiliate (other than Cyxtera Receivables Holdings, LLC) incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing, all products and proceeds of the foregoing and, subject to entry of the Final Order, all proceeds and property recovered in respect of Avoidance Actions (collectively, the “Previously Unencumbered Property”); provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors’ economic rights, including, without limitation, any and all proceeds of the foregoing.

(b) Liens Priming the Prepetition Liens. Subject only to the Carve Out, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all property of the Debtors that is subject to the Prepetition Liens, including, without limitation, the Prepetition Collateral and Cash Collateral; provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors’ economic rights, including, without limitation, any and all proceeds of the foregoing.

(c) Liens Junior to Certain Other Liens. Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Debtors



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immediately junior to the Senior Liens, provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing.

8. Adequate Protection for the Prepetition Priority/1L Secured Parties. Subject only to the Carve Out, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral (including Cash Collateral), for any diminution in value of such interests ("Diminution in Value"), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Collateral, the Carve Out, the Debtors' use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Prepetition Priority Administrative Agent and the Prepetition First Lien Administrative Agent, respectively, for the benefit of themselves and the other Prepetition Priority/1L Secured Parties, respectively, are hereby granted the following (collectively, the "First Lien Adequate Protection Obligations"):

(a) Prepetition Priority Adequate Protection. Solely to the extent of any Diminution in Value of the Prepetition Priority Secured Parties' interest in Prepetition Priority Collateral, the Prepetition Priority Secured Parties are hereby granted the following as adequate protection:

(1) Prepetition Priority Adequate Protection Liens. Additional and replacement, valid, binding, enforceable non-avoidable, and effective and automatically



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perfected postpetition security interests in and liens on all DIP Collateral upon entry of this Interim Order (the “Prepetition Priority Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, and upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions; subject to the terms of this Interim Order, the Prepetition Priority Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, (C) any liens granted in connection with the Receivables Program (the “Receivables Program Liens”), and (D) other valid, perfected and unavoidable Senior Liens; and shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code);

(2) Prepetition Priority Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the “Prepetition Priority Adequate Protection Superpriority Claims”), except with respect to the Carve Out, the DIP Superpriority Claims, and the Receivables Program Superpriority Claims at the applicable Debtor;



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subject to the Carve Out, the DIP Superpriority Claims, and the Receivables Program Superpriority Claims at the applicable Debtor in all respects, the Prepetition Priority Adequate Protection Superpriority Claims shall not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; provided that the Prepetition Priority Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition Priority Adequate Protection Superpriority Claims under section 507(b) of the Bankruptcy Code granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the DIP Lenders, in each case, as provided in the DIP Documents;

(b) Prepetition First Lien Adequate Protection. Solely to the extent of any Diminution in Value of the Prepetition First Lien Secured Parties' interest in Prepetition First Lien Collateral, the Prepetition First Lien Secured Parties are hereby granted the following as adequate protection:

(1) Prepetition First Lien Adequate Protection Liens. Additional and replacement, valid, binding, enforceable non-avoidable, and effective and automatically perfected postpetition security interests in and liens on all DIP Collateral upon entry of this



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Interim Order (the “Prepetition First Lien Adequate Protection Liens”, and collectively with the Prepetition Priority Adequate Protection Liens, the “Adequate Protection Liens”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, and upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions; subject to the terms of this Interim Order, the Prepetition First Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) DIP Liens, (C) the Receivables Program Liens, and (D) other valid, perfected and unavoidable Senior Liens; subject, as applicable, to the Priority/1L Intercreditor Agreement; shall be *pari passu* with the Prepetition Priority Adequate Protection Liens; and shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code);

(2) Prepetition First Lien Adequate Protection Superpriority Claims.

As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases senior to any and all other administrative expense claims in the Cases to the extent of any postpetition Diminution in Value (the “Prepetition First Lien Adequate Protection Superpriority Claims”, and collectively with the Prepetition Priority Adequate Protection



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Superpriority Claims, the “Adequate Protection Superpriority Claims”), except with respect to the Carve Out, the DIP Superpriority Claims, the Receivables Superpriority Claims at the applicable Debtor and, subject, as applicable, to the Priority/1L Intercreditor Agreement, the Prepetition First Lien Adequate Protection Superpriority Claims; subject in all respects to the Carve Out, the DIP Superpriority Claims, the Receivables Superpriority Claims at the applicable Debtor and, subject, as applicable to the Priority /1L Intercreditor Agreement, the Prepetition First Lien Adequate Protection Superpriority Claims, the Prepetition First Lien Adequate Protection Superpriority Claims shall not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; provided that the Prepetition First Lien Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition First Lien Adequate Protection Superpriority Claims under section 507(b) of the Bankruptcy Code granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or satisfied in a manner otherwise agreed to by the DIP Lenders, in each case, as provided in the DIP Documents;



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(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 18 of this Interim Order, (i) all reasonable and documented fees and expenses, whether incurred before or after the Petition Date, including all reasonable and documented fees and expenses of counsel and financial advisors to the DIP Agent and Prepetition Priority/1L Administrative Agents, DIP Lenders, and DIP/First Lien Group and other professionals retained as provided for in the DIP Documents and this Interim Order, including, without limitation, of (A) ArentFox Schiff LLP, as counsel to the DIP Agent and Prepetition Priority Administrative Agents; (B) Davis Polk & Wardwell LLP, as counsel to the Prepetition First Lien Administrative Agent; (C) Greenberg Traurig, LLP, as local bankruptcy counsel to the Prepetition First Lien Administrative Agent; (D) FTI Consulting, Inc., as financial advisor to the Prepetition First Lien Administrative Agent; (E) Gibson, Dunn & Crutcher LLP as counsel to the DIP Lenders and DIP/First Lien Group, (F) Gibbons P.C., as local bankruptcy counsel to the DIP Lenders and DIP/First Lien Group; and (G) Houlihan Lokey Capital, Inc., as financial advisor to the DIP Lenders and DIP/First Lien Group (all payments referenced in this sentence, collectively, the “Adequate Protection Payments”). None of the Adequate Protection Payments shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application seeking compensation for services or reimbursement of expenses with respect thereto or otherwise seek the Court’s approval of any such payments.



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(d) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Priority/1L Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Priority/1L Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Priority/1L Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Priority/1L Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

(e) Other Covenants. The Debtors shall maintain their cash management arrangements in a manner consistent with the Cash Management Order approving the Debtors' cash management motion. The Debtors shall comply with the covenants contained in the DIP Credit Agreement regarding the conduct of business, including, without limitation, preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of their business and the maintenance of properties and insurance.



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(f) Reporting Requirements. As additional adequate protection to the Prepetition Priority/1L Secured Parties, the Debtors shall comply with all reporting requirements set forth in the DIP Credit Agreement and provide the Prepetition Priority/1L Administrative Agents, for distribution to the Prepetition Priority/1L Secured Parties and, to the extent applicable, counsel to such parties (and subject to applicable confidentiality restrictions in any of the Prepetition Priority/1L Loan Documents, including with respect to any “private” side lender database) with all written financial reporting, periodic reporting and other information required to be provided to the DIP Agent or DIP Secured Parties under the DIP Documents, including with regards to any Subsequent DIP Budget or Approved DIP Budget Variance Report (the “Adequate Protection Reporting Requirement”). Upon indefeasible payment in full of all DIP Obligations, the Prepetition Priority/1L Secured Parties shall continue to be entitled hereby to satisfaction of the Adequate Protection Reporting Requirement.

(g) Miscellaneous. Except for (i) the Carve Out and (ii) as otherwise provided herein, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Priority/1L Secured Parties pursuant to paragraph 8 of this Interim Order shall not be subject, junior, or *pari passu* to, or subordinated to or made *pari passu* with, any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise.



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9. Carve Out.

(a) Carve Out. As used in this Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$7 million incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel (Kirkland &



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Ellis LLP), counsel to the Prepetition Priority/1L Secured Parties, counsel to PNC Bank, the U.S. Trustee, and counsel to the Committee (to the extent one has been appointed), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. For the avoidance of doubt, the Debtors' obligations to pay Allowed Professional Fees or fund the Carve Out shall not be limited to funds held in the Escrow Account, and amounts held in the Escrow Account shall not in any way act as a cap on Allowed Professional Fees.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Committee, the Prepetition Priority/1L Secured Parties, PNC Bank, and the U.S. Trustee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand (including cash in the Escrow Account) as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice



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Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Priority/1L Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Priority/1L Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 9, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 9, prior to



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making any payments to the DIP Agent or the Prepetition Priority/1L Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition Priority/1L Administrative Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the terms hereof and the DIP Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, the Receivables Program Order, or in any Prepetition Priority/1L Facilities, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the Receivables Program Superpriority Claims, the Adequate Protection Liens, and the 507(b) Claim, and any and all other



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forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Obligations.

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration

Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(d) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agent, DIP Lenders, or the Prepetition Priority/1L Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any successor cases under any chapter of the Bankruptcy Code (the “Successor Cases”). Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, or the Prepetition Priority/1L Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.



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Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief

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10. Reservation of Rights of the DIP Agent, DIP Lenders, and Prepetition Priority/1L Secured Parties. Subject only to the Carve Out, notwithstanding any other provision in this Interim Order or the DIP Documents to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition Priority/1L Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at and following the Final Hearing; provided that any such further or different adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens of the DIP Secured Parties granted under this Interim Order and the DIP Documents; (b) any of the rights of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties under the DIP Documents, the Prepetition Priority/1L Loan Documents, any intercreditor agreement, or the Bankruptcy Code or under non-bankruptcy law (as applicable), including, without limitation, the right of any of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code solely in connection with the DIP Facility, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition Priority/1L Secured Parties to



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seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition Priority/1L Secured Parties' rights and remedies. For all adequate protection purposes throughout the Cases, each of the Prepetition Priority/1L Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

11. Reservation of Certain Committee and Third Party Rights and Bar of Challenges and Claims. Subject to the Challenge Period (as defined herein), the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors in all circumstances and for all purposes and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, and waivers contained in this Interim Order, including, the Debtors' Stipulations, shall be binding upon all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent jurisdiction) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (i) before the earlier of (a) five (5) business days prior to the commencement of the hearing to confirm a chapter 11 plan in these Cases; (b) except as to any Committee, seventy-five (75) calendar days after entry of the Interim Order; and (c) in the case of any such adversary proceeding or contested matter filed by



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any Committee, sixty (60) calendar days after the appointment of such Committee (the “Challenge Period” and the date of expiration of the Challenge Period, the “Challenge Period Termination Date”); provided, however, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7, or (y) if a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (A) the time remaining under the Challenge Period plus ten (10) days or (B) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); (ii) seeking to avoid, object to, or otherwise challenge the findings or Debtors’ Stipulations regarding: (a) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Priority/1L Administrative Agents and the Prepetition Priority/1L Secured Parties; or (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Obligations (any such claim, a “Challenge”), and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case) shall be deemed to be forever barred; (b) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff,



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recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Cases and any Successor Cases; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Priority/1L Secured Parties' claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules and remains pending and the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates. Furthermore, if any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging



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to the Debtors or their estates, including, without limitation any challenges (including a Challenge) with respect to the Prepetition Priority/1L Loan Documents, the Prepetition Liens, and the Prepetition Obligations, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest.

12. Termination Date. On the Termination Date (as defined below) (a) all DIP Obligations shall be immediately due and payable, all Commitments will terminate, and the Carve Out Reserves shall be funded as set forth in this Interim Order; (b) all authority to use Cash Collateral shall cease; provided, however, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to fund the Carve Out, pay payroll, and other expenses critical to the administration of the Debtors' estates solely in accordance with the Approved DIP Budget, subject to any Permitted Variance provided for in the DIP Documents; and (c) the DIP Secured Parties shall be otherwise entitled to exercise rights and remedies under the DIP Documents in accordance with this Interim Order.

13. Events of Default. The occurrence of any of the following events, unless waived by the Required DIP Lenders in accordance with the terms of the DIP Documents, shall constitute an event of default (each, an "Event of Default" and collectively, the "Events of Default"): (a) the failure of the Debtors to perform any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, (b) the failure of the Debtors to comply with any of the Required



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Milestones (as defined below) or (c) the occurrence of an “Event of Default” under the DIP Credit Agreement.

14. Milestones. The Debtors’ failure to comply with those certain case milestones set forth in section 5.20 of the DIP Credit Agreement (collectively, the “Required Milestones”) shall constitute an “Event of Default” in accordance with the terms of the DIP Credit Agreement.

15. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order, subject to the Remedies Notice Period (defined below), (a) the DIP Agent (at the direction of the Required DIP Lenders) may declare (any such declaration shall be, upon delivery by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee, (if appointed), counsel to the Prepetition Priority/1L Secured Parties, counsel to PNC Bank, and the U.S. Trustee, referred to herein as a “Termination Declaration”)) (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the Carve Out shall be triggered, through the delivery of the Carve Out Trigger Notice to the DIP Borrower and (b) subject to paragraph 12(b), the DIP Agent



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(at the direction of the Required DIP Lenders) may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date on which a Termination Declaration is delivered, the “Termination Date”). The automatic stay in the Cases otherwise applicable to the DIP Agent, the DIP Lenders, and the Prepetition Priority/1L Secured Parties is hereby modified so that five (5) business days after the Termination Date (the “Remedies Notice Period”): (a) the DIP Agent (at the direction of the Required DIP Lenders) shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and this Interim Order to satisfy the DIP Obligations, DIP Superpriority Claims, and DIP Liens, subject to the Carve Out; (b) subject to the foregoing clause (a), the applicable Prepetition Priority/1L Secured Parties shall be entitled to exercise their respective rights and remedies to the extent available in accordance with the applicable Prepetition Priority/1L Loan Documents and this Interim Order with respect to the Debtors’ use of Cash Collateral. During the Remedies Notice Period, the Debtors, the Committee (if appointed), and/or any party in interest shall also be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose of contesting whether an Event of Default has occurred or is continuing. Except as set forth in this paragraph 15 or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition Priority/1L Secured Parties under this Interim Order. Unless the Court



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orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to all of the DIP Agent, DIP Lenders, and Prepetition Priority/1L Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition Priority/1L Secured Parties shall be permitted to exercise all remedies set forth herein, and in the DIP Documents, and as otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order; provided, that the Prepetition Priority/1L Secured Parties shall be permitted to exercise remedies to the extent available solely with respect to the Debtors' use of Cash Collateral.

16. Limitation on Charging Expenses Against Collateral. Subject to entry of the Final Order, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral or the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, the DIP Lenders, or the Prepetition Priority/1L Secured Parties pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, and the Prepetition Priority/1L Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Priority/1L Secured Parties.



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17. Use of Cash Collateral. The Debtors are hereby authorized to use all Cash Collateral of the Prepetition Priority/1L Secured Parties, but solely for the purposes set forth in this Interim Order and in accordance with the Approved DIP Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents), including, without limitation, to make payments on account of the Adequate Protection Payments provided for in this Interim Order, from the date of this Interim Order through and including the date of termination of the DIP Credit Agreement. Except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

18. Expenses and Indemnification.

(a) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and without need to obtain further Court approval, including, without limitation, backstop, fronting, closing, arrangement or commitment payments (including all payments and other amounts owed to the DIP Lenders), administrative agent's fees, collateral agent's fees, fronting fees, seasoning fees, ratings agency fees, and escrow agent's fees (including all fees and other amounts owed to the DIP Agent), the reasonable and documented fees and disbursements of counsel and other professionals to the extent set forth in paragraphs 3(e)(3) and 8(c) of this Interim Order, whether or not such fees arose before or after the Petition Date, all to the extent provided in this Interim Order or the DIP Documents. Notwithstanding the foregoing and anything herein to the contrary, the Debtors are authorized and



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directed to pay on the Closing Date (as defined in the DIP Documents) all reasonable and documented fees, costs, and expenses, including the fees and expenses of advisors to the DIP Lenders, the DIP Agent, the Prepetition Priority/1L Administrative Agents, and the DIP/First Lien Group, incurred on or prior to such date or the Petition Date without the need for any professional engaged by the DIP Lenders, the DIP Agent, the Prepetition Priority/1L Administrative Agents, or the DIP/First Lien Group to first deliver a copy of its invoice as provided for herein, and without the need for any separate approval from the Court or notice to any party.

(b) The Debtors shall be jointly and severally obligated to pay (i) all fees and expenses described above, which obligations shall constitute the DIP Obligations and (ii) the Adequate Protection Payments. The Debtors are authorized to and shall pay the reasonable and documented professional fees, expenses, and disbursements of professionals to the extent provided for in paragraphs 3(e)(3) and 8(c) of this Interim Order (collectively, the “Lender Professionals” and, each, a “Lender Professional”) no later than ten (10) business days (the “Review Period”) after the receipt by counsel for the Debtors, any Committee, or the U.S. Trustee of each of the invoices therefor (the “Invoiced Fees”) and without the necessity of filing formal fee applications, complying with the U.S. Trustee Guidelines or being subject to allowance or review by the Court, including such amounts arising before the Petition Date. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall provide the specific individuals providing the services, the total number of hours billed for each individual, the hourly fee for each individual, and a



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summary description of services provided by each individual, and the expenses incurred by the applicable party and/or professionals, which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, any Committee that may be appointed in these Cases, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) days prior written notice to the submitting party of any hearing on such motion or other pleading). For avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than any portion of the Invoiced Fees that constitute Disputed Invoiced Fees.

(c) In addition, the Debtors will indemnify each of the DIP Lenders, the DIP Agent, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each an “Indemnified Person”) and hold them harmless from and against all reasonable and



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documented out-of-pocket costs, fees, and expenses (limited in the case of legal fees to the reasonable and documented legal fees and expenses of one outside counsel for the DIP Agent and one counsel for the other Indemnified Persons, taken as a whole, and if necessary, one local counsel to the Indemnified Persons, taken as a whole, in any relevant jurisdiction (and, in the case of an actual or perceived conflict of interest, one additional counsel to the affected Indemnified Persons, taken as a whole; provided that in the case of an actual or perceived conflict of interest where such Indemnified Person affected by such conflict informs the Debtors of such conflict and thereafter retains its own counsel with the Debtors' prior written consent (not to be unreasonably withheld), of another firm of counsel for such affected Indemnified Person, such fees and expenses shall also be included hereunder)), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility as and to the extent provided in the DIP Credit Agreement. No Indemnified Person (or their related persons) shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence, actual fraud, or willful misconduct or breach of their obligations under the DIP Facility. In no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential, or punitive damages.



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19. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

20. Section 507(b) Reservation. Subject only to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Priority/1L Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Priority/1L Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Priority/1L Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

21. Insurance. Until the DIP Obligations have been indefeasibly paid in full, at all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the DIP Collateral on substantially the same basis as maintained prior to the Petition Date and shall name the DIP Agent as loss payee or additional insured, as applicable, thereunder.

22. No Waiver for Failure to Seek Relief. The failure or delay of the DIP Agent or the Required DIP Lenders to exercise rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder, or otherwise.



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23. Perfection of the DIP Liens and Adequate Protection Liens.

(a) The DIP Agent and the Prepetition Priority/1L Administrative Agents are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder or under the DIP Documents. Whether or not the DIP Agent or the Prepetition Priority/1L Administrative Agents shall (at the direction of the applicable required lenders) choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not, subject to the Challenge Period, subject to challenge, dispute, or subordination as of the date of entry of this Interim Order. If the DIP Agent or the Prepetition Priority/1L Administrative Agents (at the direction of the applicable required lenders) determines to file or execute any financing statements, agreements, notice of liens, or similar instruments, the Debtors shall use commercially reasonable efforts to cooperate and assist in any such execution and/or filings as reasonably requested by the DIP Agent or the Prepetition Priority/1L Administrative Agents (at the direction of the applicable required lenders), and the automatic stay shall be modified solely to allow such filings as provided for in this Interim Order.

(b) A certified copy of this Interim Order may, at the direction of the applicable required lenders, be filed with or recorded in filing or recording offices by the DIP Agent or the Prepetition Priority/1L Administrative Agents in addition to or in lieu of such financing statements,



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mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording; provided, *however*, that notwithstanding the date of any such filing, the date of such perfection shall be the date of this Interim Order.

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords, lessors, or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code, subject to applicable law. Any such provision shall have no force and effect with respect to the granting of the DIP Liens and the Adequate Protection Liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in accordance with the terms of the DIP Credit Agreement or this Interim Order, subject to applicable law.

24. Release. Subject to the rights and limitations set forth in paragraph 11 of this Interim Order, effective upon entry of the Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge, effective upon entry of this Interim Order, each of the DIP Secured Parties and each of their respective affiliates, former,



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Caption of Order: Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief

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current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such (collectively, the “Related Parties”), and, effective upon entry of the Final Order, each of the Prepetition Priority/1L Secured Parties and each of their respective Related Parties, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Liens, the DIP Documents, the Prepetition Obligations, the Prepetition Liens or the Prepetition Priority/1L Loan Documents, as applicable, including, without limitation: (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Priority/1L Secured Parties; provided that nothing in this paragraph 24 shall in any way limit or release the obligations of any DIP Secured Party under the DIP Documents.



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25. Credit Bidding. The DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition Priority/1L Administrative Agents (at the direction of the applicable required lenders) shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the underlying lenders' respective claims, including, for the avoidance of doubt, Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the Prepetition Collateral or the DIP Collateral including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii).

26. Preservation of Rights Granted Under this Interim Order.

(a) Unless and until all DIP Obligations are indefeasibly paid in full, in cash, and all Commitments are terminated, the Prepetition Priority/1L Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Priority/1L Loan Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral; and (ii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral, except as set forth in paragraph 23 herein.

(b) In the event this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or the Prepetition Priority/1L Secured Parties hereunder arising prior to the effective date of any such



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vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition Priority/1L Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits afforded in section 364(e) of the Bankruptcy Code.

(c) Unless and until all DIP Obligations, Prepetition Obligations, and Adequate Protection Payments are indefeasibly paid in full, in cash, and all Commitments are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents or, if not provided for therein, with the prior written consent of the DIP Agent, the Required DIP Lenders, and the Prepetition Priority Administrative Agent and the Prepetition First Lien Administrative Agent (at the direction of the applicable required lenders), (x) any modification, stay, vacatur, or amendment of this Interim Order or (y) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases, *pari passu* with or senior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, or the Prepetition Obligations (except as it relates to the Receivables Program Superpriority Claim), or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents (including the Carve Out), any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Liens, as applicable (except for the



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Receivables Program Liens); (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the Cases; (vi) an order appointing a chapter 11 trustee in any of the Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Cases.

(d) Notwithstanding any order dismissing any of the Cases entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Payments are indefeasibly paid in full in cash (and such DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) to the fullest extent permitted by law the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in clause (x) above.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Agent, the DIP



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Lenders, and the Prepetition Priority/1L Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy Code, or (iii) the entry of an order confirming a chapter 11 plan in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases, in any Successor Cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Secured Parties and the Prepetition Priority/1L Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Payments are indefeasibly paid in full, in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required DIP Lenders and the DIP Agent (acting at the direction of the Required DIP Lenders)).

(f) Other than as set forth in this Interim Order and any order authorizing the Debtors to continue the Receivables Program, subject to the Carve Out, neither the DIP Liens nor the Adequate Protection Liens shall be made subject to or *pari passu* with any lien or security



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interest granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551.

27. Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral.

Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds thereof may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties (each in their capacities as such), and each of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties (each in their capacities as such) under the DIP Documents, the Prepetition Priority/1L Loan Documents, or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed in these Cases in connection with the assertion of or joinder



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in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties to recover on the DIP Collateral or the Prepetition Collateral or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties related to the DIP Obligations or the Prepetition Obligations; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Prepetition Obligations, or the DIP Agent's, the DIP Lenders', and the Prepetition Priority/1L Secured Parties' liens or security interests in the DIP Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against the DIP Secured Parties or the Prepetition Priority/1L Secured Parties, or the DIP Agent's, the DIP Lenders', the Prepetition Priority/1L Secured Parties' respective liens on or security interests in the DIP Collateral or the Prepetition Collateral that would impair the ability of any of the DIP Secured Parties or the Prepetition Priority/1L Secured Parties, as applicable, to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition Obligations, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Priority/1L Secured Parties related to the Prepetition Obligations, or by or on behalf of the DIP Agent and the DIP Lenders related to the DIP Obligations; (c) for asserting,



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commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations, the DIP Liens, the Prepetition Obligations, or the Prepetition Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of the DIP Agent or the DIP Lenders related to the DIP Obligations or the DIP Liens, or (y) any of the Prepetition Liens or any other rights or interests of any of the Prepetition Priority/1L Secured Parties related to the Prepetition Obligations or the Prepetition Liens, *provided* that no more than \$100,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by any Committee appointed in these Cases, if any, solely to investigate or prosecute, within the Challenge Period (as defined below), the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Priority/1L Secured Parties solely concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Priority/1L Secured Parties related to the Prepetition Obligations. Nothing in this paragraph 27 shall prohibit the Debtors from responding, objecting to, or complying with discovery requests of any Committee, in whatever form, made in connection with such investigation or the payment from the DIP Collateral (including Cash Collateral) of professional fees related thereto or from contesting or challenging whether a Termination Declaration has in fact occurred.



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28. Conditions Precedent. Except as provided for in the Carve Out, no DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Documents have been satisfied in full or waived in accordance with such DIP Documents.

29. Intercreditor Provisions. Pursuant to section 510 of the Bankruptcy Code, any applicable intercreditor or subordination provisions contained in any of the Prepetition Priority/1L Loan Documents shall remain in full force and effect; provided that nothing in this Interim Order shall be deemed to provide liens to any Prepetition First Lien Secured Party on any assets of the Debtors except as set forth herein.

30. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Secured Parties, the Prepetition Priority/1L Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and permitted assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties and the applicable Prepetition Priority/1L Secured Parties; provided that, except to the extent expressly set forth in this Interim Order, the Prepetition Priority/1L Secured Parties shall have no obligation to permit the use of Cash Collateral or to



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extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise) to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition Priority/1L Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

31. Limitation of Liability. Subject to entry of a Final Order, in determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition Priority/1L Secured Parties shall not, solely by reason thereof, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any Prepetition Priority/1L Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.



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32. No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the DIP Agent nor any DIP Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Documents without the necessity of filing any such proof of claim or request for payment of administrative expenses, and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the DIP Agent's or any DIP Lender's rights, remedies, powers, or privileges under any of the DIP Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph 32 are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

33. No Requirement to File Claim for Prepetition Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition Priority/1L Administrative Agents nor any Prepetition Lender shall be required to file



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any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Obligations; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition Priority/1L Loan Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Prepetition Priority/1L Administrative Agents' or any Prepetition Lender's rights, remedies, powers, or privileges under any of the Prepetition Priority/1L Loan Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph 33 are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

34. Section 506(c) Claims. Subject to entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Agents, DIP Lenders, or, subject to entry of the Final Order, the Prepetition Priority/1L Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agents, DIP Lenders, or Prepetition Priority/1L Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

35. No Marshaling. Subject to entry of a Final Order, the DIP Agent and the DIP Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other



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similar doctrine with respect to any of the DIP Collateral, and proceeds of the DIP Collateral shall be received and applied pursuant to this Interim Order, the DIP Documents and the Prepetition Priority/1L Loan Documents, notwithstanding any other agreement or provision to the contrary, and subject to entry of the Final Order, the Prepetition Priority/1L Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral.

36. Application of Proceeds of DIP Collateral. Subject to entry of a Final Order, the DIP Obligations, at the option of the Required DIP Lenders, to be exercised in their sole and absolute discretion, shall be repaid (a) first, from the DIP Collateral comprising Previously Unencumbered Property and (b) second, from all other DIP Collateral.

37. Equities of the Case. The Prepetition Priority/1L Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to and upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Priority/1L Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral).

38. Final Hearing. The Final Hearing on the Motion shall be held on \_\_\_\_\_, 2023, at \_\_\_\_:\_\_\_\_.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2023, and shall be served on: (a) the Debtors; (b) proposed counsel to the Debtors, Kirkland & Ellis



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LLP, 601 Lexington Avenue, New York, NY 10022, Attn: Christopher Marcus, P.C., Derek I. Hunter; (c) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn: Michael D. Sirota, Warren A. Usatine, Felice R. Yudkin; (d) counsel to the DIP Lenders and the DIP/First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, NY 10166, Attn: Scott J. Greenberg, Esq. and Steven A. Domanowski, Esq.; (e) counsel to the DIP Agent, ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: Jeffrey R. Gleit, Esq.; (f) Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, NY 10017, Attn: Angela M. Libby and David Kratzer; (g) local bankruptcy counsel to the Prepetition First Lien Administrative Agent, Greenberg Traurig, LLP, 500 Campus Drive, Suite 400, Florham Park, New Jersey 07932, Attn: Alan J. Brody, Esq.; (h) the U.S. Trustee, Region 3 One Newark Center, Suite 2100, Newark, New Jersey 07102; (i) counsel to PNC Bank, Mayer Brown LLP 1221 6th Ave, New York, New York 10020 Attn: Brian Trust, Dabin Chung, and (j) counsel to any statutory committee appointed in these Cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

39. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.



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40. Retention of Jurisdiction. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.



**EXHIBIT B**

**Budget**



Cyxtera Technologies, Inc.  
Initial Approved DIP Budget - Consolidated Debtors  
(\$ in thousands)

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST
	5-Jun	12-Jun	19-Jun	26-Jun	3-Jul	10-Jul	17-Jul	24-Jul	31-Jul	7-Aug	14-Aug	21-Aug	28-Aug
	11-Jun	18-Jun	25-Jun	2-Jul	9-Jul	16-Jul	23-Jul	30-Jul	6-Aug	13-Aug	20-Aug	27-Aug	3-Sep
<b>Total Receipts</b>	<b>9,130</b>	<b>10,626</b>	<b>11,883</b>	<b>11,640</b>	<b>15,519</b>	<b>12,480</b>	<b>12,659</b>	<b>14,324</b>	<b>13,814</b>	<b>10,812</b>	<b>10,725</b>	<b>11,216</b>	<b>10,107</b>
Payroll & Commissions	(85)	(4,668)	(85)	(6,136)	(589)	(4,668)	(85)	(3,436)	(85)	(3,436)	(1,317)	(3,436)	(2,785)
Capital Expenditures	(34)	(1,122)	(1,393)	(1,226)	(944)	(861)	(757)	(757)	(1,396)	(1,709)	(1,709)	(1,709)	(1,709)
Other Operating Disbursements	(1,377)	(2,412)	(4,758)	(9,713)	(11,136)	(9,050)	(3,898)	(3,237)	(14,778)	(10,429)	(5,333)	(3,339)	(17,863)
<b>Total Operating Disbursements</b>	<b>(1,496)</b>	<b>(8,203)</b>	<b>(6,235)</b>	<b>(17,075)</b>	<b>(12,668)</b>	<b>(14,579)</b>	<b>(4,740)</b>	<b>(7,430)</b>	<b>(16,259)</b>	<b>(15,574)</b>	<b>(8,359)</b>	<b>(8,484)</b>	<b>(22,357)</b>
<b>OPERATING CASH FLOW</b>	<b>7,633</b>	<b>2,424</b>	<b>5,648</b>	<b>(5,435)</b>	<b>2,850</b>	<b>(2,099)</b>	<b>7,920</b>	<b>6,895</b>	<b>(2,444)</b>	<b>(4,762)</b>	<b>2,367</b>	<b>2,732</b>	<b>(12,250)</b>
Professional Fees	-	-	-	(2,150)	-	-	-	(6,860)	-	(2,150)	-	-	(6,260)
Utility Deposit	(5,300)	-	-	-	-	(2,700)	-	-	-	-	-	-	-
Vendor-related Motions	-	(2,990)	(2,990)	(5,979)	(5,979)	(5,979)	(2,990)	(2,990)	-	-	-	-	-
Cash Collateralization of L/Cs	(5,000)	-	-	-	-	-	-	-	-	-	-	-	-
<b>Restructuring Disbursements</b>	<b>(10,300)</b>	<b>(2,990)</b>	<b>(2,990)</b>	<b>(8,129)</b>	<b>(5,979)</b>	<b>(8,679)</b>	<b>(2,990)</b>	<b>(9,850)</b>	<b>-</b>	<b>(2,150)</b>	<b>-</b>	<b>-</b>	<b>(6,260)</b>
Interest	-	-	(186)	-	(2,474)	-	(194)	-	-	(2,469)	(194)	-	-
Financing Fees	(15,375)	-	-	-	-	-	-	-	-	-	-	-	-
Initial DIP Term Loan Funding	40,000	-	-	-	-	-	-	-	-	-	-	-	-
Bridge Facility Roll-up Escrow Release	14,000	-	-	-	-	-	-	-	-	-	-	-	-
Funded Escrow Withdrawal	-	-	-	-	-	-	-	25,000	-	-	-	-	25,000
Receivables Line	-	-	-	(15,000)	15,000	-	-	(15,000)	15,000	-	-	-	(15,000)
<b>Financing Disbursements</b>	<b>38,625</b>	<b>-</b>	<b>(186)</b>	<b>(15,000)</b>	<b>12,526</b>	<b>-</b>	<b>(194)</b>	<b>10,000</b>	<b>15,000</b>	<b>(2,469)</b>	<b>(194)</b>	<b>-</b>	<b>10,000</b>
<b>NET CASH FLOW</b>	<b>35,958</b>	<b>(566)</b>	<b>2,472</b>	<b>(28,564)</b>	<b>9,397</b>	<b>(10,778)</b>	<b>4,736</b>	<b>7,045</b>	<b>12,556</b>	<b>(9,381)</b>	<b>2,172</b>	<b>2,732</b>	<b>(8,510)</b>
Beginning Cash	40,650	76,608	76,042	78,515	49,951	59,348	48,570	53,305	60,351	72,906	63,525	65,697	68,429
Change in Cash	35,958	(566)	2,472	(28,564)	9,397	(10,778)	4,736	7,045	12,556	(9,381)	2,172	2,732	(8,510)
<b>ENDING DEBTORS CASH</b>	<b>76,608</b>	<b>76,042</b>	<b>78,515</b>	<b>49,951</b>	<b>59,348</b>	<b>48,570</b>	<b>53,305</b>	<b>60,351</b>	<b>72,906</b>	<b>63,525</b>	<b>65,697</b>	<b>68,429</b>	<b>59,919</b>
Funded Escrow	110,000	110,000	110,000	110,000	110,000	110,000	110,000	85,000	85,000	85,000	85,000	85,000	60,000
<b>TOTAL DEBTORS LIQUIDITY<sup>1</sup></b>	<b>186,608</b>	<b>186,042</b>	<b>188,515</b>	<b>159,951</b>	<b>169,348</b>	<b>158,570</b>	<b>163,305</b>	<b>145,351</b>	<b>157,906</b>	<b>148,525</b>	<b>150,697</b>	<b>153,429</b>	<b>119,919</b>

(1) Total Debtors' Liquidity at emergence (based on a 6-month projection) is estimated to be approximately \$60M and aggregate non-Debtor liquidity is estimated to be approximately \$25M; emergence liquidity does not assume a revolving credit facility upon exit.



**Exhibit B**

**DIP Credit Agreement**



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SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of June [6], 2023

by and among

CYXTERA DC PARENT HOLDINGS, INC.  
as Initial Holdings,

CYXTERA DC HOLDINGS, INC.,  
as the Borrower,

The Lenders Party Hereto,

and

Wilmington Savings Fund Society, FSB,  
as Administrative Agent and Collateral Agent,

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**EXHIBITS:**

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Exhibit Q	Form of Mortgage
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SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of June [6], 2023 (this “Agreement”), by and among CYXTERA DC PARENT HOLDINGS, INC., a Delaware corporation (“Initial Holdings”), CYXTERA DC HOLDINGS, INC., a Delaware corporation, as borrower (in such capacity, the “Borrower”), the LENDERS party hereto, and Wilmington Savings Fund Society, FSB, as Administrative Agent and as Collateral Agent.

Capitalized terms used in the recitals below that are not otherwise defined therein have the respective meanings set forth in Section 1.01.

WHEREAS, on June [4], 2023 (the “Petition Date”), Holdings, the Borrower and certain Subsidiaries of the Borrower (collectively, the “Debtors” and, each individually, a “Debtor”) commenced cases (the “Chapter 11 Cases”) under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of [New Jersey] (the “Bankruptcy Court”). The Debtors continue to operate their businesses as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, within four days of the Petition Date, [ \_ ], in its capacity as foreign representative on behalf of the Debtors, will file an application with The Court of King’s Bench of Alberta (the “Canadian Bankruptcy Court”) pursuant to Part IV of the CCAA to, among other things, recognize the Chapter 11 Cases as “foreign main proceedings” and grant certain customary related relief (the “Canadian Recognition Proceeding”);

WHEREAS, prior to the Petition Date, the Lenders (together with the other Prepetition Priority Lenders (as defined below)) provided financing to the Borrower pursuant to that certain First Lien Priority Credit Agreement, dated as of May 4, 2023, among Initial Holdings, the Borrower, as borrower, Barclays Wilmington Savings Fund Society, FSB, as Administrative Agent and Collateral Agent (the “Prepetition Priority Administrative Agent”), and the lenders party thereto from time to time (the “Prepetition Priority Lenders”) (as so amended, and as further amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the “Prepetition Priority Credit Agreement”);

WHEREAS, on the Petition Date, the Prepetition Priority Lenders under the Prepetition Priority Credit Agreement were owed approximately \$[50,000,000] in outstanding principal balance of Loans (as defined in the Prepetition Priority Credit Agreement) (the “Prepetition Priority Loans”) plus interest, fees, costs and expenses and all other Prepetition Priority Obligations under the Prepetition Priority Credit Agreement;

WHEREAS, the Prepetition Priority Obligations are secured by a security interest in substantially all of the existing and after-acquired assets of the Borrower and the Subsidiary Loan Parties (as defined in the Prepetition Priority Credit Agreement) as more fully set forth in the Prepetition Priority Loan Documents, and such security interest is perfected, and, as described in the Prepetition Priority Loan Documents subject to certain limited exceptions set forth therein, has priority over other security interests;

WHEREAS, the Borrower has requested, and, upon the terms set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured superpriority debtor-in-possession term loan credit facility of up to \$[200,000,000]<sup>1</sup> (the “DIP Facility”), consisting of: (i) a new money term loan in an aggregate principal amount not to exceed \$[150,000,000], (ii) the Roll-Up Loans and (iii) the

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<sup>1</sup> NTD: Amount to be finalized to reflect rolled up interest amount.



Transferred Loans, in each case subject to the conditions set forth herein, in the DIP Order and in the Canadian DIP Recognition Order;

WHEREAS, the proceeds of the DIP Facility shall be used to fund certain costs and expenses related to the Chapter 11 Cases and the Canadian Recognition Proceeding, and general corporate purposes and working capital requirements of the Borrower and its Subsidiaries during the pendency of the Chapter 11 Cases, in each case, pursuant to and in accordance with the Approved Budget;

WHEREAS, subject to the terms hereof, the DIP Order, and the Canadian DIP Recognition Order, the Borrower and the Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, a security interest in and lien upon substantially all of their existing and after-acquired property;

WHEREAS, the Borrower and the Guarantors' business is a mutual and collective enterprise and the Borrower and the Guarantors believe that the loans and other financial accommodations to the Borrower under this Agreement will enhance the aggregate borrowing powers of the Borrower and facilitate the administration of the Chapter 11 Cases and the Canadian Recognition Proceeding and their loan relationship with the Administrative Agent and the Lenders, all to the mutual advantage of the Borrower and the Guarantors;

WHEREAS, the Borrower and each Guarantor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement;

WHEREAS, the Administrative Agent's and the Lenders' willingness to extend financial accommodations to the Borrower, and to administer the Borrower's and the Guarantors' collateral security therefor, on a combined basis as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Borrower and the Guarantors and at the Borrower's and the Guarantors' request and in furtherance of the Borrower's and the Guarantors' mutual and collective enterprise; and

WHEREAS, all capitalized terms used in this Agreement, including in these recitals, shall have the meanings ascribed to them in Section 1.01 below, and, for the purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Section 1.02 shall govern. All Schedules, Exhibits, Annexes, and other attachments hereto, or expressly identified in this Agreement, are incorporated by reference, and taken together with this Agreement, shall constitute a single agreement. These recitals shall be construed as part of this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

SECTION 1.01 Defined Terms. Each capitalized term used in this Agreement but not defined in this Agreement shall have the meaning assigned thereto in the DIP Order. As used in this Agreement, the following terms have the meanings specified below:

"ABR," when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.



“ABR Borrowing” means a Borrowing of an ABR Loan.

“ABR Loan” means a Loan that bears interest based on the ABR.

“Acceptable Plan” means a Plan of Reorganization that is substantially consistent with the RSA and otherwise satisfactory to the Required Lenders, containing, among other things, (i) a release in favor of the Administrative Agent and the Lenders and their respective Affiliates and their representatives, counsel and advisors, and (ii) provisions with respect to the settlement or discharge of all claims and other debts and liabilities, as such plan of reorganization may be modified, altered, amended or otherwise changed or supplemented with the prior written consent of the Required Lenders (which consent of the Required Lenders may be communicated by means of a Direction of the Required Lenders).

“Adequate Protection Liens” shall have the meaning assigned to such term in the DIP Order.

“Adequate Protection Payments” shall have the meaning assigned to such term in the DIP Order.

“Adequate Protection Superpriority Claims” shall have the meaning assigned to such term in the DIP Order.

“Account Control Agreement” means an agreement among a Loan Party, a depository bank or securities intermediary, as applicable, and the Collateral Agent, which agreement is in a form reasonably acceptable to the Collateral Agent (acting at the Direction of the Required Lenders) and which provides the Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) described therein, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time. For the avoidance of doubt, it is understood and agreed that each such account control agreement shall comprise a Loan Document and a Security Document for all purposes of the Loan Documents.

“Accounting Changes” has the meaning specified in Section 1.04(d).

“Actual Borrower Professional Fees” means with respect to any period, the amount of restructuring and professional fees expended during such period for which the Loan Parties are liable for payment (including as reimbursement to any Secured Party or the Specified Lender Advisors) that correspond to the headings “Restructuring Professional Fees” in the Approved Budget as then in effect.

“Actual Cash Receipts” shall mean with respect to any period, as the context requires, (x) the amount of actual receipts during such period of the Loan Parties (excluding any borrowings under this Agreement) under the heading “Total Receipts” in the Approved Budget and/or (y) the sum, for such period, of all such receipts for all such line items which comprise “Total Receipts” (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.

“Actual Liquidity” shall mean as of any date of determination, as the context requires, for the Loan Parties, the actual amounts of U.S. Bank Cash, amounts held in the Loan Proceeds Account and the amount of any outstanding Withdrawal Notice.

“Actual Disbursement Amounts” shall mean with respect to any period, the sum, for such period, of all such operating disbursements for all such line items which comprise “Total Operating Disbursements” and “Restructuring Disbursements” (each as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.



“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

“Administrative Agent” means Wilmington Savings Fund Society, FSB, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Administrative Agent Fee Letter” means that certain fee letter, dated June [6], 2023, by and between the Administrative Agent and the Borrower.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified.

“Agent” means the Administrative Agent, the Collateral Agent, the Escrow Agent, and any successors and assigns in such capacity, and “Agents” means two or more of them.

“Agreement” has the meaning provided in the preamble hereto.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, respectively.

“Applicable Rate” means, with respect to the Term Loans, 8.50% for SOFR Loans and 7.50% for ABR Loans.

“Approved Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“Approved Budget” means the initial Approved Budget and each Approved Budget delivered pursuant to Sections 2.19 and/or 5.21. The initial Approved Budget is attached hereto as Exhibit S; *provided*, that, notwithstanding anything to the contrary, the Borrower shall provide an updated budget in form and substance acceptable to the Required Lenders two (2) Business Days prior to any Withdrawal from the Loan Proceeds Account.

“Approved Budget Variance Report” shall mean a report provided by the Borrower to the Administrative Agent, for prompt further delivery to the Lenders, (a) showing, in each case, on a line item by line item and cumulative basis, the Actual Cash Receipts, the Actual Disbursement Amounts, actual U.S. Bank Cash, Actual Liquidity, and Actual Borrower Professional Fees as of the last day of the prior week, and the Variance Testing Period then most recently ended, noting therein (i) all variances, on a line item by line item basis and a cumulative basis, from the Budgeted Cash Receipts, the Budgeted Disbursement Amounts, the Budgeted Liquidity and the Budgeted Borrower Professional Fees for such period as set forth in the Approved Budget as in effect for such period, (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance with such maximum variances set forth therein, and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such



violation exists, setting forth the actions which the Borrower has taken or intends to take with respect thereto, and (b) which such reports shall be certified by a Responsible Officer of the Borrower and shall be in a form, and shall contain supporting information, satisfactory to the Required Lenders in their sole discretion (it being acknowledged and agreed that the form of the variance report provided by the Borrower to the Lenders prior to the Effective Date, and as subsequently revised in accordance with good faith negotiations between the Lenders and the Borrower, shall be deemed satisfactory).

“Approved Electronic Communications” means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent and/or the Collateral Agent pursuant to any Loan Document or the transactions contemplated therein including any supplement, joinder or amendment to the Security Documents and any other written communication delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and any financial statements, financial and other report, notice, request, certificate and other information materials; *provided, however*, that solely with respect to delivery of any such communication by any Loan Party to the Administrative Agent and without limiting or otherwise affecting either the Administrative Agent’s right to effect delivery of such communication by posting such communication to the Approved Electronic Platform or the protections afforded hereby to the Administrative Agent in connection with any such posting, “Approved Electronic communication” shall exclude (i) any notice of borrowing, letter of credit request, notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article IV or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

“Approved Electronic Platform” has the meaning assigned to such term in Section 9.01.

“Approved Foreign Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04), substantially in the form of Exhibit A-1 or any other form reasonably approved by the Administrative Agent.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.12(d).

“Backstop Fee” has the meaning set forth in Section 2.10(e)(i).

“Backstop Parties” shall mean each of the entities set forth on Schedule 2.10(e)(i).



“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United State Code, as amended, or any similar federal or state law for the relief of debtors.

“Basel III” means, collectively, those certain agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring,” and “Guidance for National Authorities Operating the Countercyclical Capital Buffer,” each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and as implemented by a Lender’s primary banking regulatory authority.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (d) of Section 2.12.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (a) the sum of (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points); or
- (b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market



convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to either the use or administration of Adjusted Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.12 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means a date and time determined by the Administrative Agent (at the Direction of the Required Lenders), which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof)



announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12.

“BIA” means the Bankruptcy and Insolvency Act (Canada), as amended.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors of such Person, (c) in the case of any partnership, the board of directors or board of managers of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Board of Governors” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning provided in the preamble hereto and including any Successor Borrower.



“Borrowing” means Loans of the same Facility, Class and Type, made, converted or continued on the same date in the same currency and, in the case of SOFR Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means the lesser of \$1,000,000 and the remaining Commitments of the applicable Class.

“Borrowing Multiple” means \$1,000,000.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, in substantially the form of Exhibit B or another form which is acceptable to the Administrative Agent in its reasonable discretion.

“Budgeted Borrower Professional Fees” shall mean with respect to any period, the amount of restructuring and professional fees for such period that are set forth under the headings “Restructuring Professional Fees” in the Approved Budget, as then in effect.

“Budgeted Cash Receipts” means with respect to any period, as the context requires, (x) the line item under the heading “Forecast for Total Receipts” in the Approved Budget and/or (y) the sum, for such period, of all the amounts for all such line items which comprise “Total Receipts” (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.

“Budgeted Disbursement Amounts” means with respect to any period, as the context requires, (x) the amount that corresponds to the line items under the heading “Total Operating Disbursements” and “Restructuring Disbursements” (each as set forth in the Approved Budget) and/or (y) the sum, for such period, of all such line items which comprise “Total Operating Disbursements” and “Restructuring Disbursements” (each as set forth in the Approved Budget), in each case, as determined by reference to the Approved Budget as then in effect.

“Budgeted Liquidity” shall mean as of any date of determination, as the context requires, for the Loan Parties, the amount set forth as of such date as Actual Liquidity, in each case as determined by reference to the Approved Budget as then in effect.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that when used in connection with SOFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such SOFR Loans or any other dealings of such SOFR Loans, the term “Business Day” shall also exclude any day that is not a U.S. Government Securities Business Day.

“Canadian Bankruptcy and Insolvency Law” shall mean any federal, provincial or territorial Canadian law from time to time in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors, including the BIA, the CCAA, the Winding up and Restructuring Act (Canada), the Business Corporations Act (Alberta) and any other applicable corporations legislation.

“Canadian Bankruptcy Court” has the meaning set forth in the preamble hereto.

“Canadian Collateral Agreement” means the Senior Secured Superpriority Canadian Collateral Agreement dated as of the date hereof by and among each of the Loan Parties from time to time party thereto and the Collateral Agent.



“Canadian Confirmation Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Confirmation Order in Canada, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

“Canadian Defined Benefit Plan” shall mean a pension plan registered under the Income Tax Act (Canada), the Pension Benefits Act (Ontario) or any other applicable Canadian pension standards legislation, which contains a “defined benefit provision”, as such term is defined in subsection 147.1(1) of the Income Tax Act (Canada).

“Canadian DIP Recognition Order” shall mean the Canadian Supplemental Order, unless the Canadian Final Order shall have been entered, in which case it means the Canadian Final Order.

“Canadian Dollars” and “C\$” mean the lawful currency of Canada.

“Canadian Final Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Final Order in Canada and providing for a super priority charge over the Collateral located in Canada, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

“Canadian Guarantors” means any Subsidiary that is organized under the laws of Canada (or any province thereof).

“Canadian Interim Orders” shall mean, collectively, the Canadian Recognition Order and the Canadian Supplemental Order.

“Canadian Recognition Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing the Chapter 11 Cases as “foreign main proceedings” under Part IV of the CCAA, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

“Canadian Recognition Proceeding” has the meaning set forth in the preamble hereto.

“Canadian Supplemental Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Interim Order in Canada, providing for a super priority charge over the Collateral located in Canada, granting a stay of proceedings in respect of the Canadian Guarantors and granting certain customary additional relief in the Canadian Recognition Proceeding, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).



“Capital Lease Obligation” means an obligation that is a Capitalized Lease; and the amount of Indebtedness represented thereby at any time shall be the amount of the liability in respect thereof that would at that time be required to be capitalized on a balance sheet in accordance with GAAP as in effect on the Effective Date.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect on the Effective Date, recorded as capitalized leases.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“Carve-Out” shall have the meaning set forth for the defined term “Carve Out” in the DIP Order.

[“Cash Collateral” shall have the meaning assigned to such term in the DIP Order.]

“Cash Management Order” shall mean any interim or final order authorizing and approving 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 [Docket No. [ \_ ]].

“Cash Management Obligations” means (a) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“CCAA” means the Companies’ Creditors Arrangement Act (Canada), R.S.C 1985, c. C-36.

“CCAA Administration Charge” means the “Administration Charge” as defined in the Canadian Supplemental Order, in an amount not to exceed CAD\$[ \_ ].

“CCAA Filing Date” shall mean the date on which an application to commence the Canadian Recognition Proceeding is made to the Canadian Bankruptcy Court.

“Change of Control” means (a) the failure of Holdings prior to an IPO, or, after an IPO, the IPO Entity, to own directly or indirectly through wholly-owned Subsidiaries that are Guarantors, all of the Equity Interests in the Borrower, (b) prior to an IPO, the failure by the Permitted Holders to own, directly or indirectly through one or more holding company parents of Holdings, beneficially and of record, Equity Interests in Holdings representing at least a majority of the aggregate ordinary voting power for the election of the Board of Directors of Holdings represented by the issued and outstanding Equity Interests in Holdings, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings, (c) after an IPO, the acquisition of ownership, directly or



indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 40% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the IPO Entity and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the IPO Entity held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one of more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings or the IPO Entity or (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the documentation governing the Prepetition Priority Credit Agreement, the Prepetition Existing Credit Agreement or any other Material Indebtedness that is Subordinated Indebtedness. For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of Holdings, the IPO Entity or the Borrower, as applicable, directly or indirectly owned by the Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (c) of this definition is triggered.

“Change in Law” means (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (i) any requests, rules, guidelines or directives under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or issued in connection therewith and (ii) any requests, rules, guidelines or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case shall be deemed to be a “Change in Law,” regardless of when enacted, adopted, promulgated or issued.

“Chapter 11 Cases” shall have the meaning assigned to such term in the recitals of this Agreement.

“Class” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Loans under a specific Facility, (b) any Commitment, refers to whether such Commitment is a Commitment under a specific Facility and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Upon funding of the Initial Term Loans on the Effective Date, there shall only be one Class of Term Loans that shall be deemed to include Initial Term Loans, the Roll-Up Loans and Transferred Loans.

Any Term Loans that have different terms and conditions from shall be construed to be in different Classes.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning assigned to the term “DIP Collateral” in the DIP Order.



“Collateral Agent” means Wilmington Savings Fund Society, FSB, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

- (a) the Obligations shall have been secured by a perfected security interest in the Collateral with the priority required by the DIP Order and the Canadian DIP Recognition Order (subject in all respects to the Carve Out, the CCAA Administration Charge and the Superpriority Liens (as defined in the Receivables Order, as applicable) through the provisions of the DIP Order or the Canadian DIP Recognition Order, to the extent such security interest may be perfected by virtue of the DIP Order, the Canadian DIP Recognition Order or by filings of Uniform Commercial Code or PPSA financing statements or any other method of perfection referred to in this definition;
- (b) the Administrative Agent shall have received from (i) Holdings, each Intermediate Parent, the Borrower, each Domestic Subsidiary and each Foreign Guarantor (other than an Excluded Subsidiary) either (x) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guarantee Agreement, in the form specified therein, duly executed and delivered on behalf of such Person, (ii) the English Guarantors either (x) a counterpart of the Debenture Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes an English Guarantor after the Effective Date (including by ceasing to be an Excluded Subsidiary), a Security Accession Deed as defined in the Debenture Agreement, (iii) with respect to each Foreign Guarantor, such other Security Documents, including, but not limited to, the Canadian Collateral Agreement and the Deed of Hypothec, reasonably requested by the Required Lenders (which request may be communicated by a Direction of the Required Lenders) and (iv) Holdings, the Borrower and each Subsidiary Loan Party Account Control Agreements with respect to each deposit account and securities account (in each case, other than any Excluded Account), duly executed and delivered on behalf of such Person, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, documents and, to the extent reasonably requested by the Administrative Agent, opinions and certificates of the type referred to in Section 4.01(b) and 4.01(c);
- (c) all outstanding Equity Interests of the English Guarantors owned by or on behalf of any Loan Party shall have been charged pursuant to the Debenture Agreement (and the Administrative Agent shall have received certificates or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank);
- (d) if any Indebtedness for borrowed money of Holdings, any Intermediate Parent, the Borrower or any Subsidiary in a principal amount of \$2,000,000 or more individually is owing by such obligor to any Loan Party, such Indebtedness shall be evidenced by a promissory note, such promissory note shall have been pledged pursuant to the DIP Order or the Debenture Agreement (as applicable) and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;
- (e) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements, required by the Security Documents, Requirements of Law or reasonably requested by the Required Lenders (which can be communicated by a Direction of the Required Lenders) to be filed, delivered, registered or recorded to create the Liens intended to be created by



the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term “Collateral and Guarantee Requirement,” shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording;

- (f) if requested by the Required Lenders (which can be communicated by a Direction of the Required Lenders), the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record owner of such Mortgaged Property, (ii) with respect to each Mortgage, (w) a policy of title insurance (or marked unconditional commitment to issue such policy) in the amount equal to not less than 100% of the Fair Market Value of the Mortgaged Property covered thereby, including fixtures, as reasonably determined by the Borrower and agreed to by the Administrative Agent, issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements (other than a creditor’s rights endorsement), coinsurance and reinsurance as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates, (x) such affidavits, instruments of indemnification (including a so-called “gap” indemnification) as are customarily requested by the title company to induce the title company to issue the title policies and endorsements contemplated above, (y) evidence reasonably acceptable to the Collateral Agent of payment by the Borrower (or evidence that the same will be paid out of Loan proceeds) of all title policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the title policies referred to above, (iii) a survey of such Mortgaged Property in such form as shall be required by the title company to issue the so-called comprehensive and other survey-related endorsements and to remove the standard survey exceptions from the title policies and endorsements contemplated above (*provided, however*, that a survey shall not be required to the extent that the issuer of the applicable title insurance policy provides reasonable and customary survey-related coverages (including, without limitation, survey-related endorsements) in the applicable title insurance policy based on an existing survey and/or such other documentation as may be reasonably satisfactory to the title insurer), (iv) a completed “life of loan” FEMA flood determination and notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each applicable Loan Party, (v) if the improvements located on such Mortgaged Property is located in an area determined by FEMA to have special flood hazards, evidence of such flood insurance as may be required under applicable law, including Regulation H of the Board of Governors and the other Flood Insurance Laws and as required under Section 5.07, and (vi) a customary legal opinion from appropriate counsel practicing in the jurisdiction in which the real property covered by such Mortgage is located.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (i) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if, and for so long as and to the extent that the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree in writing that the cost of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any material adverse Tax consequences (including the imposition of withholding or other material Taxes)), shall be excessive in view of the benefits to be obtained by the Lenders therefrom (or the relevant assets or actions



shall be limited in a manner reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower in order to reduce such cost), (ii) Liens required to be granted from time to time pursuant to the term “Collateral and Guarantee Requirement” shall be subject to applicable exceptions and limitations set forth in the Security Documents, if any, (iii) other than set forth in Section 5.19, in no event shall control agreements or other control or similar arrangements be required with respect to deposit accounts, securities accounts, commodities accounts or other assets specifically requiring perfection by control agreements, (iv) no perfection actions shall be required with respect to Vehicles and other assets subject to certificates of title (other than the filing of UCC financing statements), (v) no perfection actions shall be required with respect to commercial tort claims with a value less than \$1,000,000 individually (other than the filing of UCC financing statements), and no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$1,000,000 individually (other than the filing of UCC financing statements), (vi) except with respect to any Foreign Guarantors, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required to be taken to create any security interests in assets located or titled outside of the United States or to perfect or make enforceable any security interests in any such assets and (vii) except with respect to any Foreign Guarantors, no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements). The Administrative Agent (acting at the Direction of the Required Lenders) may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date).

“Commitment” means with respect to any Lender, the commitment of such Lender to make Term Loans pursuant to Section 2.01, as set forth on Schedule 2.01, which Schedule 2.01 will be modified upon completion of the Primary Syndication.

“Commitment Fee” has the meaning set forth in Section 2.10(e)(iii).

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company Materials” has the meaning specified in Section 5.01.

“Consolidated Total Debt” means, as of any date of determination (i) the outstanding principal amount of all third party Indebtedness for borrowed money (including purchase money Indebtedness), unreimbursed drawings under letters of credit, Capital Lease Obligations, third party Indebtedness obligations evidenced by notes or similar instruments, and, without duplication, Receivables Guarantees, in each case of the Borrower and the Restricted Subsidiaries on such date, on a consolidated basis and determined in accordance with GAAP (excluding, in any event, the effects of any discounting of Indebtedness resulting from the application of acquisition method accounting in connection with the Transactions) minus (ii) the aggregate amount of cash and Permitted Investments on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date to the extent the use thereof for the application to the payment of Indebtedness is not prohibited by law or any contract to which the Borrower and any Restricted Subsidiary is a party. It is understood that to the extent the Borrower or any Restricted Subsidiary incurs any Indebtedness and receives the proceeds of such Indebtedness, for purposes of determining any incurrence test under this Agreement and whether the Borrower is in Pro Forma Compliance with any such test, the proceeds of such incurrence shall not be “netted” pursuant to clause (ii) of this definition.



“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise.

“Controlling” and “Controlled” have meanings correlative thereto.

“Copyright License” means any written agreement, now or hereafter in effect, granting to any Person any right under any Copyright now or hereafter owned by any other Person or that such other Person otherwise has the right to license, and all rights of any such Person under any such agreement.

“Copyrights” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all copyright rights in any work arising under the copyright laws of the United States or any other jurisdiction or territory, whether as author, assignee, transferee or otherwise; (b) all registrations and applications for registration of any such copyright in the United States or any other jurisdiction or territory, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office (or any similar office in any other jurisdiction or territory); (c) all renewals of any of the foregoing; and (d) all rights to sue for past, present and future infringements of any of the foregoing.

“Credit Event” shall have the meaning assigned to such term in Section 4.03.

“CRO” has the meaning assigned to such term in Section 5.23(a).

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Debenture Agreement” means the Debenture Agreement by and among the English Guarantors and the Collateral Agent.

“Debtor” shall have the meaning assigned to such term in the recitals of this Agreement.

“Deed of Hypothec” means the deed of hypothec to be entered into by and among Cyxtera Communications Canada, ULC and the Collateral Agent, as hypothecary representative for the benefit of the Secured Parties.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Term Loans within one Business Day of the date on which such funding is required hereunder, (b) notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement or provided any written notification to any Person to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent (whether acting on its own behalf or at the reasonable request of the Borrower (it being understood that the Administrative Agent shall comply with any such reasonable request)), to confirm that it will comply with the terms of this Agreement relating to its obligations to fund



prospective Loans, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, unless the subject of a good faith dispute or subsequently cured, or (e)(i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding or any action or proceeding of the type described in Section 7.01(h) or (i), or has had a receiver, receiver and manager, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, receiver and manager, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) has become the subject of a Bail-In Action.

“DIP Facility” shall have the meaning assigned to such term in the recitals of this Agreement.

“DIP Order” shall mean the Interim Order, and upon its entry, the Final Order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order is in effect and not vacated or stayed, together with all extensions, modifications and amendments thereto which are satisfactory to the Required Lenders, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guarantee) the Obligations, and grant Liens under this Agreement and the other Loan Documents, as the case may be, provides for the superpriority of the Administrative Agent’s and the Lenders’ claims and authorizes the use of Cash Collateral.

“Discharge of DIP Obligations” shall mean the occurrence of (a) all Commitments shall have been terminated and (b) the principal of and interest on each Loan and all other Obligations shall have been paid in full in cash (other than in respect of contingent indemnification and expense reimbursement claims not then due).

“Disclosure Statement” shall mean the related disclosure statement (and all exhibits thereto) with respect to the Acceptable Plan, which shall be satisfactory to the Required Lenders.

“Direction of the Required Lenders” means a written direction or instruction from Lenders constituting the Required Lenders which may be in the form of an email or other form of written communication and which may come from any Specified Lender Advisor. Any such email or other communication from a Specified Lender Advisor shall be conclusively presumed to have been authorized by a written direction or instruction from the Required Lenders and such Specified Lender Advisor shall be conclusively presumed to have acted on behalf of and at the written direction or instruction from the Required Lenders (and the Agents shall be entitled to rely on such presumption). For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory,” “acceptable,” “reasonably satisfactory” or “reasonably acceptable” (or any expression of similar import) to the Required Lenders, such determination may be communicated by a Direction of the Required Lenders as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the Required Lenders, such consent, approval or determination may be communicated by a Direction of the Required Lenders as contemplated above. The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any purported Direction of the Required Lenders, and the Agents shall not have any responsibility to independently determine whether such direction has in fact been authorized by the Required Lenders.



“Disposition” has the meaning assigned to such term in Section 6.05.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

- (a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or
- (c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date 91 days after the Latest Maturity Date; *provided, however*, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale,” a “change of control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after repayment in full of all the Loans and all other Obligations that are accrued and payable and the termination of the Commitments and (ii) if an Equity Interest in any Person is issued pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), any Intermediate Parent, the Borrower or any of the Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by Holdings (or any direct or indirect parent company thereof), the Borrower or any of the Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person.

“Disqualified Lenders” means (a) those Persons identified by Holdings to the Specified Lender Advisors in writing prior to the Effective Date, (b) those Persons who are competitors of the Borrower and its Subsidiaries identified by Holdings to the Administrative Agent from time to time in writing (including by email) and (c) in the case of each Persons identified pursuant to clauses (a) and (b) above, any of their Affiliates that are either (i) identified in writing by Holdings from time to time or (ii) clearly identifiable as Affiliates on the basis of such Affiliate’s name (other than, in the case of this clause (c), Affiliates that are bona fide debt funds); *provided*, that no designation of any Person as a Disqualified Lender shall retroactively disqualify any assignments or participations made to, or information provided to, such Person before it was designated as a Disqualified Lender, and such Person shall not be deemed to be a Disqualified Lender in respect of any assignments or participations made to such Person prior to the date of such designation.

“Dollar Amount” means, at any time with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding (or in which such participation is held).

“Dollars” or “\$” refers to lawful money of the United States of America.



“Domain Name” means all Internet domain names and associated URL addresses in or to which any such Person now or hereafter has any right, title or interest.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Effective Date Direct Borrowing” means proceeds of the Initial Term Loans of \$[40,000,000], less the amount of applicable fees and expenses, representing the portion of Initial Term Loans to be made on the Effective Date that shall be funded to an account of the Borrower pursuant to the Flow of Funds Statement on the Effective Date (rather than being deposited into the Loan Proceeds Account).

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person, other than, in each case, (i) a natural person, (ii) a Defaulting Lender, (iii) a Disqualified Lender to the extent a list of Disqualified Lenders has been made available to all Lenders or (iv) Holdings, the Borrower or any of their respective Subsidiaries and Affiliates.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“English Guarantors” means any Subsidiary that is incorporated under the laws of England and Wales.

“Environmental Laws” means applicable common law and all applicable treaties, rules, regulations, codes, ordinances, judgments, orders, decrees and other applicable Requirements of Law, and all applicable injunctions or binding agreements issued, promulgated or entered into by or with any Governmental Authority, in each instance relating to the protection of the environment, including with respect to the preservation or reclamation of natural resources or the Release or threatened Release of any Hazardous Material, or to the extent relating to exposure to Hazardous Materials, the protection of human health or safety.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities), of Holdings, any Intermediate Parent, the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or



permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 or Section 430 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by a Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan (including any liability under Section 4062(e) of ERISA) or Multiemployer Plan; or (h) the receipt by a Loan Party or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, “insolvent” within the meaning of Section 4245 of ERISA or in “endangered” or “critical status”, within the meaning of Section 432 of the Code or Section 305 of ERISA.

“Escrow Agent” means the Escrow Agent under the Escrow Agreement, which shall initially be The Bank of New York Mellon, a New York banking corporation.

“Escrow Agreement” means the Escrow Agreement, dated as of the Effective Date (as amended, restated, supplemented or otherwise modified from time to time), among the Borrower, the Escrow Agent and the Administrative Agent for and on behalf of the Lenders relating to the Loan Proceeds Account.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“euro” means the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the EMU Legislation.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended from time to time.



“Excluded Accounts” means deposit accounts or securities accounts (a) the funds in which consist of (i) funds held by the Borrower or any Subsidiary in trust for any director, officer or employee of the Borrower or any Subsidiary or any employee benefit plan maintained by the Borrower or any Subsidiary or (ii) funds representing deferred compensation for the directors and employees of the Borrower and the Subsidiaries, (b) used by the Loan Parties exclusively for disbursements and payments (including payroll) in the ordinary course of business, (c) that are zero balance accounts and (e) that are used exclusively for any Permitted Receivables Financing.

“Excluded Assets” means (a) any assets (excluding the proceeds therefrom) to the extent that and for so long as the grant of a Lien thereon to secure the Secured Obligations is prohibited by any Requirements of Law (other than to the extent that any such prohibition would be rendered ineffective pursuant to any other applicable Requirements of Law), but excluding any prohibition that is ineffective under the Uniform Commercial Code of any applicable jurisdiction or the Bankruptcy Code, (b) (x) receivables and related assets (or interests therein) (A) sold to any Receivables Subsidiary, (B) otherwise pledged, factored, transferred or sold in connection with any Permitted Receivables Financing and (C) intercompany notes owed by a Receivables Subsidiary to a Restricted Subsidiary in connection with purchase of receivables and receivables assets and (y) the Equity Interests of any Receivables Subsidiary, (c) in relation to any non-U.S. Loan Party, any assets of, held by or relating to, such non-U.S. Loan Party, defined or described as “excluded assets” in any Security Document to the extent the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree and (d) any other asset to the extent the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree that the cost, burden, difficulty or other consequences (including any material adverse Tax consequences) of obtaining a security interest in such asset or perfection thereof is excessive in relation to the benefit to the Lenders of the security to be afforded thereby (the relevant assets shall be limited in a manner reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower in order to reduce such cost, burden, difficulty or other consequences)).

“Excluded Subsidiary” means (a) [reserved], (b) each Subsidiary listed on Schedule 1.01(a), (c) [reserved], (d) [reserved], (e) any Subsidiary that is prohibited by (i) applicable Requirements of Law or (ii) any contractual obligation existing on the Effective Date or on the date any such Subsidiary is acquired (so long in respect of any such contractual prohibition such prohibition is not incurred in contemplation of such acquisition), in each case from guaranteeing the Secured Obligations (but only for so long as such restriction is continuing) or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee, or for which the provision of a Guarantee would result in a material adverse Tax consequence (including as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction) to the Borrower, its Subsidiaries or their Affiliates as reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower, (f) any Foreign Subsidiary (other than any Foreign Guarantors), (g) any FSHCO (other than any Foreign Guarantors), (h) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary or FSHCO (other than any Foreign Guarantors), (i) any other Subsidiary excused from becoming a Loan Party pursuant to clause (f)(i) of the definition of the term “Collateral and Guarantee Requirement,” (j) each Receivables Subsidiary, (k) any not-for-profit Subsidiaries, captive insurance companies or other special purpose subsidiaries designated by the Borrower from time to time, (l) [reserved] and (m) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders), the cost, burden, difficulty or other consequences (including any materially adverse Tax consequences) of providing a guarantee of the Secured Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom.

“Excluded Swap Obligation” means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any Guarantee thereof) is or



becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any applicable keep well, support, or other agreement for the benefit of such Guarantor and any and all Guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Guarantor as specified in any agreement between the relevant Loan Parties and counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a Master Agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) net income or profits (however denominated), branch profits Taxes, and franchise Taxes, in each case imposed by (i) a jurisdiction as a result of such recipient being organized or having its principal office located in or, in the case of any Lender, having its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) any jurisdiction as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than a connection arising solely from such recipient having executed, delivered, or become a party to, performed its obligations or received payments under, received or perfected a security interest under, sold or assigned an interest in, engaged in any other transaction pursuant to, or enforced, any Loan or Loan Document), (b) any withholding Tax that is attributable to a Lender's failure to comply with Section 2.15(e), (c) any U.S. federal withholding Taxes imposed due to a Requirement of Law in effect at the time (i) a Lender becomes a party hereto (other than pursuant to an assignment request by the Borrower under Section 2.17) or (ii) a Lender designates a new lending office, except in each case to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding Tax under Section 2.15(a) and (d) any Tax imposed pursuant to FATCA.

"Existing Escrow Agreement" has the meaning assigned to such term in Section 2.01(b).

"Facility" means the DIP Facility.

"Fair Market Value" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset.

"FATCA" means Sections 1471 through 1474 of the Code as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code and any law, regulation, rule, promulgation or official agreement implementing an official governmental agreement or intergovernmental agreement with respect to the foregoing.



“FCPA” has the meaning assigned to such term in Section 3.18(b).

“Federal Funds Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States.

“FEMA” means the U.S. Federal Emergency Management Agency.

“Final Order” means the Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Related Relief, which shall be in form and substance satisfactory to the Required Lenders.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“First Testing Period” means the four week period ending on June [16], 2023.

“Floor” means a rate of interest equal to 1.00% *per annum*.

“Flow of Funds Statement” means a flow of funds statement relating to payments to be made and credited by all of the parties on the Effective Date (including wire instructions therefor), as prepared by the Borrower and its financial advisor in consultation with (and approved by) the Administrative Agent and the Required Lenders.

“Forbearance Agreement” means the Forbearance Agreement substantially in the form of Exhibit T by and among, inter alia, the Borrower, Initial Holdings, and Citibank, N.A., as administrative agent and collateral agent for the lenders under the Prepetition Existing Credit Agreement.

“Foreign Guarantors” means (i) the English Guarantors and (ii) the Canadian Guarantors.

“Foreign Pension Plan” shall mean any employee benefit plan sponsored, maintained or contributed to by any Loan Party or any of its Subsidiaries or Foreign Subsidiaries that, under Requirements of Law (other than the laws of the United States or any political subdivision thereof) is required to be funded through a trust or other funding vehicle, other than a trust or other funding vehicle maintained exclusively by a Governmental Authority.

“Foreign Plan Event” shall mean, (i) the receipt of notice of intent by a Governmental Authority to terminate or to appoint a trustee or similar official to administer a Foreign Pension Plan or alleging the insolvency of a Foreign Pension Plan, (ii) the incurrence of liability by any Loan Party or any of its Subsidiaries or Foreign Subsidiaries under applicable law on account of the complete or partial termination of a Foreign Pension Plan, (iii) the occurrence of any transaction with respect a Foreign Pension Plan that is prohibited under any applicable law or (iv) the imposition on any Loan Party or any of its Subsidiaries or Foreign Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any law applicable to a Foreign Pension Plan.



“Foreign Prepayment Event” has the meaning assigned to such term in Section 2.09(f).

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“FSHCO” means any direct or indirect Domestic Subsidiary of Holdings (other than the Borrower) that has no material assets other than Equity Interests (or Equity Interests and Indebtedness) in one or more Foreign Subsidiaries (other than any Foreign Guarantors) or other FSHCOs.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of the Borrower or the Restricted Subsidiaries, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of the Borrower or any subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of “Capital Lease Obligations.”

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning assigned to such term in Section 9.04(e). “Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other



financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined in good faith by a Financial Officer. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee Agreement” means the Guarantee Agreement by and among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit C.

“Guarantors” means, collectively, (i) with respect to the Secured Obligations of the Borrower, each of Holdings, the Intermediate Parents and the Subsidiary Loan Parties and (ii) with respect to the Secured Obligations of any of Holdings, the Intermediate Parents and the Subsidiary Loan Parties, the Borrower.

“Hazardous Materials” means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated as hazardous or toxic, or any other term of similar import, pursuant to any Environmental Law.

“Historical Financial Statements” means the audited consolidated balance sheet and audited consolidated statements of operations, comprehensive income (loss), changes in shareholders’ equity and cash flows of Cyxtera Technologies, Inc. as of the end of and for such fiscal year, and related notes thereto.

“Holdings” means (a) prior to any IPO, Initial Holdings and (b) on and after an IPO, (i) if the IPO Entity is Initial Holdings or any Person of which Initial Holdings is a subsidiary, Initial Holdings or (ii) if the IPO Entity is a subsidiary of Initial Holdings that is an Intermediate Parent, the IPO Entity.

“IFRS” means international accounting standards as promulgated by the International Accounting Standards Board.

“Immediate Family Members” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Impacted Loans” has the meaning assigned to such term in Section 2.12(a)(ii).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred and unpaid purchase price of property or services (excluding trade accounts payable in the ordinary course of business and any earn-out obligation until such obligation becomes a liability on the balance sheet of



such Person in accordance with GAAP and if not paid within 60 days after being due and payable), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others (other than by endorsement of negotiable instruments for collection in the ordinary course of business), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; *provided* that the term "Indebtedness" shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Parent Entity appearing on the balance sheet of the Borrower solely by reason of push down accounting under GAAP, (v) accrued expenses and royalties and (vi) asset retirement obligations and obligations in respect of reclamation and workers' compensation (including pensions and retiree medical care) that are not overdue by more than 60 days. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business.

"Indemnified Taxes" means all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"Indemnatee" has the meaning assigned to such term in Section 9.03(b).

"Information" has the meaning assigned to such term in Section 9.12(a).

"Initial Budget" shall have the meaning assigned to such term in Section 3.20(d).

"Initial Holdings" has the meaning assigned to such term in the preamble hereto.

"Initial Term Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make an Initial Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Initial Term Loan to be made by such Term Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to an Assignment and Assumption. The initial amount of each Term Lender's Initial Term Commitment is set forth on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Term Lender shall have assumed its Initial Term Commitment, as the case may be. As of the Effective Date, the total Initial Term Commitment is \$150,000,000.

"Initial Term Loans" means Loans made pursuant to Section 2.01(a).



“Intellectual Property” means, with respect to any Person, (a) all intellectual property and similar property of every kind and nature now owned or hereafter acquired by such Person, whether registered or unregistered, including inventions, designs, Patents, Trademarks, Copyrights, Licenses, Trade Secrets, Domain Names, and any intellectual property rights in confidential or proprietary technical and business information, know-how, show-how or other data or information, Software and databases, (b) any and all other IP Rights throughout the world, together with (i) all registrations, extensions, supplements, applications and renewals of such IP Rights, (ii) the right to sue for past, present and future infringements or other violations of such IP Rights; and (iii) all rights corresponding thereto.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.05.

“Interest Payment Date” means, subject to Section 2.10(c), (a) with respect to any ABR Loan, the last day of each calendar month of March, June, September and December and (b) with respect to any SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a SOFR Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (or, if agreed to by each Lender participating therein, twelve months or such other period less than twelve months or such other period less than one month, in each case as the Borrower may elect), *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) that in the event the Borrower elects an Interest Period of less than one month, the interest rate in respect of the applicable SOFR Borrowing shall be determined through the use of straight-line interpolation by reference to two such rates, one of which shall be determined as if the length of the period of such deposits were the period of time for which the rate for such deposits are available is the period next shorter than the length of such Interest Period and the other of which shall be determined as if the period of time for which the rate for such deposits are available is the period next longer than the length of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Order” means the Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay (VI) Scheduling a Final Hearing and (II) Related Relief, in form and substance satisfactory to the Required Lenders.

“Intermediate Parent” means any subsidiary of Holdings of which the Borrower is a subsidiary.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or Indebtedness or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other Indebtedness or equity participation or interest in, another Person including any partnership or joint venture interest in such other Person,



(excluding, in the case of the Borrower and the Restricted Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. The amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof, as determined in good faith by a Financial Officer, (iii) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the Fair Market Value of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (iv) any Investment (other than any Investment referred to in clause (i), (ii) or (iii) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (A) the cost of all additions thereto and minus (B) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (B) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; *provided* that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.

“Investor” means a holder of Equity Interests in Holdings (or any direct or indirect parent thereof) on the Effective Date.

“IP Rights” all rights in Patents, Trademarks, Copyrights, trade secrets, know-how and any and all other Intellectual Property.

“IPO” means the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common Equity Interests in the IPO Entity.

“IPO Entity” means, at any time at and after an IPO, Initial Holdings, a parent entity of Initial Holdings, or an Intermediate Parent, as the case may be, the Equity Interests in which were issued or otherwise sold pursuant to the IPO; *provided* that, immediately following the IPO, the Borrower is a wholly-owned subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to the IPO.



“IRS” means the United States Internal Revenue Service.

“Junior Financing” means any Material Indebtedness (other than any permitted intercompany Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary) that is (a) subordinated in right of payment to the Obligations, (b) secured on a junior basis to the Liens securing the Secured Obligations or (c) unsecured.

“KPI Report” has the meaning specified in Section 5.21(a).

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Term Loan or Term Commitment hereunder at such time, including the latest maturity or expiration date of the Term Loans, or Other Term Loan, in each case as extended in accordance with this Agreement from time to time.

“Lenders” means (a) the Term Lenders and (b) any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, in each case other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“License” means any Patent License, Trademark License, Copyright License or other license or sublicense agreement to which any Person is a party, together with any and all renewals, extensions, supplements and continuations thereof.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan Documents” means this Agreement, the Administrative Agent Fee Letter, the Escrow Agreement, the Guarantee Agreement, the Security Documents and, except for purposes of Section 9.02, any promissory notes delivered pursuant to Section 2.07(f).

“Loan Parties” means Holdings, each Intermediate Parent, the Borrower and the Subsidiary Loan Parties.

“Loan Proceeds Account” shall mean an escrow account with the Escrow Agent into which the proceeds of the Loans (other than the Effective Date Direct Borrowing) shall be deposited and retained subject to withdrawal thereof by the Borrower (each such event, a “Withdrawal”) pursuant to a Withdrawal Notice for use in accordance with the terms hereof and of the Approved Budget or return thereof to the Lenders upon the occurrence of the Maturity Date for any reason whatsoever.

“Loans” means the Term Loans.

“Management Investors” means the directors and officers and employees of Holdings, any Intermediate Parents, the Borrower and/or any of their respective subsidiaries who are (directly or indirectly through one or more investment vehicles) Investors.

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement.”

“Material Adverse Effect” means any event, circumstance or condition that has had, or could reasonably be expected to have, a material and adverse effect on (a) the business or condition (financial or otherwise), performance, properties, contingent liabilities, material agreements or prospects of the



Borrower and the Restricted Subsidiaries, taken as a whole (excluding (i) any matters publicly disclosed in writing or disclosed to the Administrative Agent and the Lenders in writing prior to the filing of the Chapter 11 Cases, (ii) any matters disclosed in any first day pleadings or declarations filed in the Chapter 11 Cases and (iii) the filing of the Chapter 11 Cases, the events and conditions related and/or leading up thereto as disclosed in such declaration and the effects thereof or resulting from such events, commencement, continuation and prosecution and any action required to be taken under the Loan Documents or under the DIP Orders), (b) the ability of the Borrower and the Guarantors, taken as a whole, to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Obligations), or obligations in respect of one or more Swap Agreements, of any one or more of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries in an aggregate principal amount exceeding \$2,500,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings, the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Intellectual Property” means any patents, trademarks, copyrights, and all other intellectual property that, individually or in the aggregate, are material to the operation of the business of the Borrower and its Subsidiaries, taken as a whole.

“Material Intellectual Property Provision” means, notwithstanding anything else in this Agreement or the other Loan Documents to the contrary (a) no Investment or Disposition of Material Intellectual Property may be made from Holdings, the Borrower or any Loan Party, in each case, to any Subsidiary that is not a Loan Party and (b) no Subsidiary that is not a Loan Party may hold any Material Intellectual Property at any time, including property that was Material Intellectual Property at the time of acquisition by such Subsidiary or becomes Material Intellectual Property thereafter.

“Material Real Property” means any fee-owned real property with a book value greater than \$2,000,000 as determined on the Effective Date (for existing fee-owned real property) or, with respect to after-acquired fee-owned real property, on the date of acquisition thereof or of the Person that owns such fee-owned real property.

“Material Subsidiary” means (a) each wholly-owned Restricted Subsidiary that, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 1.00% of the consolidated revenues or total assets, as applicable, of the Borrower for such quarter or that is designated by the Borrower as a Material Subsidiary and (b) any group comprising wholly-owned Restricted Subsidiaries that each would not have been a Material Subsidiary under clause (a) but that, taken together, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 2.50% of the consolidated revenues or total assets, as applicable, of the Borrower for such quarter; *provided* that solely for purposes of Sections 7.01(h) and 7.01(i) each such Restricted Subsidiary forming part of such group is subject to an Event of Default under one or more of such Sections.

“Maturity Date” means the earliest of (i) the date that is 6 months after the Effective Date, as such date may be extended pursuant to Section 2.19, (ii) the date on which all Loans are accelerated and all unfunded Commitments (if any) have been terminated in accordance with this Agreement, by operation of law or otherwise, (iii) the date the Bankruptcy Court orders a conversion of the Chapter 11 Cases to a chapter 7 liquidation or the dismissal or termination of the chapter 11 case or the Canadian Recognition Proceeding of any Debtor, (iv) the closing of any sale of assets pursuant to Section 363 of the U.S.



Bankruptcy Code, which when taken together with all other sales of assets since the Effective Date, constitutes a sale of substantially all of the assets of the Loan Parties, (v) the Plan Consummation Date and (vi) proceedings under or pursuant to the BIA have been commenced in respect of the Canadian Guarantors unless otherwise consented to in writing by the Required Lenders (which consent may be communicated via an email from either of the Specified Lender Advisors).

“Maximum Rate” has the meaning assigned to such term in Section 9.18.

“Milestones” means the Milestones set forth in Section 5.20.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage” means a mortgage, deed of trust, assignment of leases and rents or other security document granting a Lien on any Mortgaged Property to secure the Secured Obligations, *provided, however*, in the event any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes or similar fees, the applicable Mortgage shall not secure an amount in excess of 100% of the Fair Market Value of such Mortgaged Property. Each Mortgage shall be substantially in the form of Exhibit Q with such modifications as may be required by, or customary to account for, local law matters.

“Mortgaged Property” means Material Real Property with respect to which a Mortgage is granted pursuant to Section 4.01(f) (if any), 5.11, 5.12 or 5.14.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate is then making contributions, or accruing an obligation to make contributions, or has within the last six plan years made contributions, including, for these purposes, any Person which ceased to be an ERISA Affiliate during such six year period.

“Net Proceeds” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds, including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out (but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by Holdings, the Borrower and the Restricted Subsidiaries in connection with such event (including attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a Disposition of an asset (including pursuant to a Sale Leaseback or Casualty Event or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by Holdings, the Borrower and the Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by Holdings, the Borrower or the Restricted Subsidiaries and (iii) the amount of all Taxes paid (or reasonably estimated to be payable), and the amount of any reserves established by Holdings, the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, *provided* that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.



“Non-Cash Compensation Expense” means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Obligations” means (a) the due and punctual payment by the Borrower of (i) the principal of and interest at the applicable rate or rates provided in this Agreement (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual payment and performance of all other obligations of the Borrower under or pursuant to each of the Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents (including interest and monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“OFAC” has the meaning assigned to such term in Section 3.18(d).

“Organizational Documents” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future recording, stamp, court or documentary, intangible, filing or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, except any such Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17(b)).

“Parent Entity” means any Person that is a direct or indirect parent of the Borrower.

“Participant” has the meaning assigned to such term in Section 9.04(c)(i).

“Participant Register” has the meaning assigned to such term in Section 9.04(c)(ii).

“Patent License” means any written agreement, now or hereafter in effect, granting to any Person any right to make, use or sell any invention on which a Patent, now or hereafter owned by any other Person or that any other Person now or hereafter otherwise has the right to license, is in existence, and all rights of any such Person under any such agreement.



“Patents” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all letters patent of the United States or the equivalent thereof in any jurisdiction or territory, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other jurisdiction or territory, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other jurisdiction or territory; (b) all reissues, continuations, divisions, continuations-in-part, renewals, improvements or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein; and (c) all rights to sue for past, present and future infringements of any of the foregoing.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Receivables Financing” means, collectively, the receivables securitizations or other receivables financing (including any factoring program) in effect as of the Effective Date pursuant to that certain Amended and Restated Receivables Purchase Agreement, dated as of June [ \_ ], 2023, by and among, *inter alia*, Cyxtera Receivables Holdings, LLC, a Delaware limited liability company, PNC Bank, National Association as administrative agent, Cyxtera Communications, LLC, a Missouri limited liability company, in its individual capacity and as initial servicer, PNC Capital Markets LLC, a Pennsylvania limited liability company, as structuring agent (without giving effect to any amendments or modifications thereto entered on or after the Effective Date, other than those approved by a Direction of the Required Lenders, in an aggregate amount not to exceed \$37,500,000 that are non-recourse to Holdings and the Restricted Subsidiaries (except for (x) any customary limited recourse or recourse limited Subsidiaries that are not Loan Parties, (y) any customary performance undertaking or Guarantee, including the Originator Performance Guaranty, between Cyxtera Communications, LLC and Cyxtera Federal Group, Inc. and (z) a customary unsecured parent Guarantee (a “Receivables Guarantee”) by Holdings, Intermediate Holdings or a Restricted Subsidiary that is a parent company of a Restricted Subsidiary of obligations of Restricted Subsidiaries, and, in each case, reasonable extensions thereof); *provided* that with respect to Permitted Receivables Financings incurred in the form of a factoring program, the outstanding amount of such Permitted Receivables Financing for the purposes of this definition shall be deemed to be equal to the Permitted Receivables Net Investment for the last Test Period.

“Permitted Receivables Net Investment” means the aggregate cash amount paid by the purchasers under any Permitted Receivables Financing in the form of a factoring program in connection with their purchase of accounts receivable and customary related assets or interests therein, as the same may be reduced from time to time by collections with respect to such accounts receivable and related assets or otherwise in accordance with the terms of such Permitted Receivables Financing (but excluding any such collections used to make payments of commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Receivables Financing in the form of a factoring program which are payable to any Person other than the Borrower or a Restricted Subsidiary).

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR.”

“Permitted Encumbrances” means:

- (a) Liens for taxes or other governmental charges that are not overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;



- (b) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or construction contractors' Liens and other similar Liens arising in the ordinary course of business that secure amounts not overdue for a period of more than 30 days or, if more than 30 days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i);
- (d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, incurred in the ordinary course of business or consistent with past practices;
- (e) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole;
- (f) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 7.01(j);
- (g) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Borrower or any of its Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments, *provided* that such Lien secures only the obligations of the Borrower or such subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01;
- (h) rights of set-off, banker's lien, netting agreements and other Liens arising by operation of law or by of the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments; and
- (i) Liens arising from precautionary Uniform Commercial Code financing statements or any similar filings made in respect of operating leases entered into by the Borrower or any of its subsidiaries.

"Permitted Holder" means (a) the Sponsor; (b) Longview Asset Management LLC, (c) the Management Investors and their Immediate Family Members; and (d) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the date hereof) of which the Persons described in clauses (a), (b) and/or (c) are members; provided that the Persons described in clauses (a), (b) and/or (c) beneficially own a majority of the Equity Interests beneficially owned by such group..



“Permitted Investments” means any of the following, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars, euro, Sterling, Canadian Dollars, Singapore dollars, yuan or such other currencies held by it from time to time in the ordinary course of business;
- (b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States or (ii) any member nation of the European Union rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, having average maturities of not more than 24 months from the date of acquisition thereof; *provided* that the full faith and credit of the United States or such member nation of the European Union is pledged in support thereof;
- (c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least (x) \$250,000,000 in the case of U.S. banks and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks (any such bank meeting the requirements of clause or (ii) above being an “Approved Bank”), in each case with average maturities of not more than 12 months from the date of acquisition thereof;
- (d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 24 months from the date of acquisition thereof;
- (e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of (x) \$250,000,000 in the case of U.S. banks and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks, in each case, for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States or (ii) any member nation of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody’s, in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a Fair Market Value of at least 100% of the amount of the repurchase obligations;
- (f) marketable short-term money market and similar highly liquid funds either (i) having assets in excess of (x) \$250,000,000 in the case of U.S. banks or other U.S. financial institutions and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks or other non-U.S. financial institutions or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody’s (or, if at any time neither S&P nor Moody’s shall be rating such obligations, an equivalent rating from another nationally recognized rating service);
- (g) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, or by any political subdivision or taxing authority of any such state, commonwealth or territory having an investment grade rating from either S&P or Moody’s (or the equivalent thereof);



- (h) investments with average maturities of 12 months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;
- (i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euro or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction;
- (j) investments, classified in accordance with GAAP as current assets, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;
- (k) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, *provided* such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, *provided* such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than 24 months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank; and
- (l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" shall have the meaning assigned to such term in the recitals of this Agreement.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and (i) in respect of which a Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA or (ii) has at any time within the preceding six years been maintained, sponsored or contributed to by any Loan Party or any ERISA Affiliate.

"Plan Consummation Date" shall mean the date of the substantial consummation (as defined in Section 1101 of the U.S. Bankruptcy Code) of a chapter 11 plan of reorganization, which, for purposes of this Agreement, shall be no later than the effective date of a chapter 11 plan of reorganization that is confirmed pursuant to an order of the Bankruptcy Court.

"Plan of Reorganization" means a plan of reorganization with respect to the Loan Parties and their Subsidiaries pursuant to the Chapter 11 Cases.



“PPSA” means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, that, if attachment, perfection, the effect of perfection or non-perfection or the priority of Collateral Agent’s Lien on any Collateral are governed by the personal property security laws of any jurisdiction in Canada other than the laws of the Province of Ontario, “PPSA” means those personal property security laws in such other jurisdiction in Canada (including the Civil Code of Quebec) for the purposes of the provisions hereof relating to such attachment, perfection, the effect of perfection or non-perfection or such priority and for the definitions relating to such provisions.

“Platform” has the meaning specified in Section 5.01.

“Prepetition” means the time period ending immediately prior to the filing of the Chapter 11 Cases.

“Prepetition Existing Administrative Agent” means the “Administrative Agent” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Credit Agreement” means that certain Credit Agreement entered into as of May 1, 2017, among Initial Holdings, the Borrower, Citibank, N.A., as administrative agent, collateral agent and L/C issuer, and each lender from time to time party thereto (as the same may be amended, amended and restated, modified, refinanced and/or restated prior to the date hereof).

“Prepetition Existing Lenders” means the “Lenders” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Liens” means the Liens securing obligations under the Prepetition Existing Credit Agreement and the other Prepetition Existing Loan Documents.

“Prepetition Existing Loan Documents” means the “Loan Documents” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Obligations” means the “Loan Document Obligations” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Secured Parties” means the “Secured Parties” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Indebtedness” shall mean all Indebtedness of the Loan Parties outstanding on the Petition Date immediately prior to the filing of the Chapter 11 Cases.

“Prepetition Priority Administrative Agent” shall have the meaning assigned to such term in the recitals of this Agreement.

“Prepetition Priority Collateral Agent” means Wilmington Savings Fund Society, FSB, in its capacity as collateral agent under the Prepetition Priority Credit Agreement.

“Prepetition Priority Agents” shall mean the Prepetition Priority Administrative Agent and the Prepetition Priority Collateral Agent.

“Prepetition Priority Credit Agreement” shall have the meaning assigned to such term in the recitals of this Agreement.



“Prepetition Priority Lenders” shall have the meaning assigned to such term in the recitals of this Agreement.

“Prepetition Priority Loans” shall have the meaning assigned to such term in the recitals of this Agreement.

“Prepetition Priority Loan Documents” shall mean the “Loan Documents” as defined in the Prepetition Priority Credit Agreement.

“Prepetition Priority Obligations” shall mean the “Loan Document Obligations” as defined in the Prepetition Priority Credit Agreement.

“Prepayment Event” means:

- (a) any sale, transfer or other Disposition of any property or asset of Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries pursuant to Section 6.05(j), Section 6.05(k) and Section 6.05(n); or
- (b) the incurrence by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 or permitted by the Required Lenders pursuant to Section 9.02 (or other requisite Lenders as specified in Section 9.02).

“Primary Syndication” means the primary syndication of the Loans and the assignments of the Loans in connection with the offering of the right to participate in the Loans that shall be made available to all “Lenders” under the Prepetition Existing Credit Agreement.

“Primary Syndication Procedures” means the procedures to effect the Primary Syndication that will be in form and substance acceptable to the Required Lenders.

“Prime Rate” means the rate of interest per annum last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective.

“Proposed Change” has the meaning assigned to such term in Section 9.02(c).

“PSF” has the meaning assigned to such term in Section 5.22.

“Public Lender” has the meaning specified in Section 5.01.

“Qualified Equity Interests” means Equity Interests in Holdings or any parent of Holdings other than Disqualified Equity Interests.

“Receivables Guarantee” has the meaning assigned to such term in the definition of “Permitted Receivables Financing.”

“Receivables Order” means any order 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, in form and substance satisfactory to the Required Lenders.

“Receivables Program” has the meaning assigned to such term in the Receivables Order.

“Receivables Subsidiary” means any Special Purpose Entity established in connection with a Permitted Receivables Financing.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the partners, directors, officers, employees, trustees, agents, controlling persons, advisors and other representatives of such Person and of each of such Person’s Affiliates and permitted successors and assigns.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) and including the environment within any building or other structure.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Remedies Notice Period” shall have the meaning assigned to such term in Section 7.01.

“Removal Effective Date” has the meaning assigned to such term in Article VIII.

“Required Lenders” means, at any time, Lenders having (a) Term Loans outstanding and (b) unused Commitments that, taken together, represent more than 50% of the sum of (x) all Term Loans outstanding and (y) all unused Commitments at such time; *provided* that whenever there are one or more Defaulting Lenders or Disqualified Lenders, the total amount of outstanding Term Loans and unused Commitments of each Defaulting Lender and each Disqualified Lender shall, in each case, be excluded for purposes of making a determination of Required Lenders.

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject (including any order of the Bankruptcy Court).

“Resignation Effective Date” has the meaning assigned to such term in Article VIII.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, or other similar officer, manager or a director of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a) of the definition of the term “Collateral and Guarantee Requirement,” any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.



“Restricted Debt Payments” has the meaning set forth in Section 6.08(b).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests.

“Restricted Subsidiary” means any Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.09(d).

“Rolling Four Week Testing Period” mean each cumulative period of four weeks ending on the Friday of each of the calendar weeks, respectively.

“Roll-Up Loans” has the meaning assigned to such term in Section 2.01(b).

“RSA” means the Restructuring Support Agreement dated as of May 4, 2023 (as may be amended, restated, supplemented or otherwise modified from time to time), including, the exhibits, annexes and schedules thereto.

“RSA Termination Event” shall mean an event described in Section 12 of the RSA, which with the taking of applicable action thereunder would result in the termination of the RSA.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any other Restricted Subsidiary (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed of.

“Sanctions” means economic sanctions administered or enforced by the United States Government (including without limitation, sanctions enforced by OFAC), the United Nations Security Council, the European Union or Her Majesty’s Treasury.

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Secured Obligations” means the Obligations.

“Secured Parties” means (a) each Lender, (b) the Administrative Agent and Collateral Agent and (c) the permitted successors and assigns of each of the foregoing.

“Security Documents” means the DIP Order, the UK Security Agreements, the Canadian DIP Recognition Order and any other document pursuant to which a Loan Party grants a security interest to secure the Obligations.



“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Borrowing” means a Borrowing of a SOFR Loan.

“SOFR Loan” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “ABR”.

“Special Purpose Entity” means a direct or indirect subsidiary of Holdings, whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve its separateness from Holdings and/or one or more Subsidiaries of Holdings.

“Specified Lender Advisors” shall mean (x) Gibson, Dunn & Crutcher LLP, as legal counsel, and (y) Houlihan Lokey Capital, Inc, as financial advisor.

“Sponsor” means each of (a) BC Partners, Inc. and its Affiliates, including the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby, and any investors in such funds (including committed investors in BC European Capital X, L.P.), partnerships or other co-investments vehicles as of the Effective Date, but other than, in each case, Holdings and its Subsidiaries or any portfolio company, and (b) Medina Capital Advisors, LLC and its Affiliates (including the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby but other than, in each case, Holdings and its Subsidiaries or any portfolio company).

“Spot Rate” means on any day with respect to any currency other than Dollars, the rate at which such currency may be exchanged into Dollars (at the bid price), as set forth at approximately 11:00 a.m., London time, on such day as determined by OANDA Corporation (and available at <http://www.oanda.com/>) for such currency; in the event that such rate is not determined by OANDA Corporation, the Spot Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower, or, in the absence of such agreement, such Spot Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., New York City time, on such date for the purchase of Dollars for delivery two Business Days later.

“SPV” has the meaning assigned to such term in Section 9.04(e).

“Subordinated Indebtedness” means any Junior Financing under clause (a) of the definition thereof.

“Submitted Budget” has the meaning assigned to such term in Section 5.21(a).

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such



date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Loan Party” means each Subsidiary that is a party to the Guarantee Agreement.

“Successor Borrower” has the meaning assigned to such term in Section 6.03(a)(iv).

“Successor Holdings” has the meaning assigned to such term in Section 6.03(a)(v).

“Swap” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Person, any obligation to pay or perform under any Swap.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Commitment” means, with respect to each Term Lender, its Initial Term Commitment.

“Term Lenders” means initially the Persons listed on Schedule 2.01(b) and as of any date of determination from and after the Effective Date, any other Person that shall have become a party hereto pursuant to an Assignment and Assumption in respect of any Term Loans, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Term Loans” means, individually and collectively, the Initial Term Loans, the Roll-Up Loans and the Transferred Loans.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if



as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; *provided*, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day; *provided, further*, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Term SOFR Adjustment” means, for any calculation with respect to an ABR Loan or a SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

ABR Loans: 0.11448%

SOFR Loans:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.11448%
Three months	0.26161%
Six months	0.42826%

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.



“Test Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ending on or prior to such date for which financial statements have been (or were required to have been) delivered pursuant to Section 5.01(a) or Section 5.01(b); *provided* that prior to the first date financial statements have been delivered pursuant to Section 5.01(a) or Section 5.01(b), the Test Period in effect shall be the period of four consecutive fiscal quarters of the Borrower ended December 31, 2022.

“Trade Secrets” means, with respect to any Person, all of such Person’s right, title and interest in and to the following: (a) any and all confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, data, databases and data collections and (b) all rights corresponding to any of the foregoing throughout the world.

“Trademark License” means any written agreement, now or hereafter in effect, granting to any Person any right to use any Trademark now or hereafter owned by any other Person or that any other Person otherwise has the right to license, and all rights of any such Person under any such agreement.

“Trademarks” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all trademarks, service marks, trade names, brand names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, domain names, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other jurisdiction or territory or any political subdivision thereof, and all extensions or renewals thereof, as well as any unregistered trademarks or service marks used by a Person; (b) all goodwill associated therewith or symbolized by the foregoing; (c) all other assets, rights and interests that uniquely reflect or embody such goodwill; and (d) all rights to sue for past, present and future infringements of any of the foregoing.

“Transactions” means, collectively, (a) the negotiation, execution and delivery by each Loan Party of the Loan Documents to which it is to be a party and the borrowing and the funding of the Initial Term Loans and the issuance of the Roll-Up Loans on the Effective Date and (b) the payment of the fees and expenses incurred in connection with any of the foregoing (including the Transaction Costs).

“Transaction Costs” means any fees, costs or expenses incurred or paid by any Parent Entity, Initial Holdings, the Borrower or any Subsidiary in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“Transferred Loans” has the meaning assigned to such term in Section 2.01(b).

“Type,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Term SOFR Rate or the Alternate Base Rate.

“UCC” or “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code



as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UK Collateral Documents” means (i) the UK Security Agreements, (ii) security accession deeds governed by the laws of England and Wales and (iii) any Security Document governed by the laws of England and Wales.

“UK Security Agreements” means the Debenture Agreement.

“UK Subsidiary” means any existing or future direct or indirect subsidiary of the Borrower that is incorporated under the laws of England and Wales.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“U.S. Bank Cash” means cash of the Borrower and its Subsidiaries deposited in commercial banks located in the United States and Permitted Investments of the Borrower and its Subsidiaries, as currently reported in the Approved Budget and in a manner consistent with past practices (excluding amounts held for customers pursuant to the terms of the agreements with such customers and which are excluded from the Approved Budget and related reporting).

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Variance Testing Period” shall mean, as applicable, each of (a) the First Testing Period and (b) each Rolling Four Week Testing Period ending on each second Friday thereafter, commencing with the Rolling Four Week Testing Period ending on June 30, 2023.

“Vehicles” means all railcars, cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state and all tires and other appurtenances to any of the foregoing.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“wholly-owned subsidiary” means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law) are, as of such date, owned, controlled or held by such Person or one or more wholly-owned subsidiaries of such Person or by such Person and one or more wholly-owned subsidiaries of such Person.



“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withdrawal Notice” means a notice substantially in the form attached hereto as Exhibit R to be delivered by the Borrower to the Escrow Agent and the Administrative Agent from time to time to request a Withdrawal from the Loan Proceeds Account.

“Withholding Agent” shall mean any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Class (e.g., a “Term Loan”) or by Type (e.g., a “SOFR Loan”) or by Class and Type (e.g., a “SOFR Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Borrowing”) or by Type (e.g., a “SOFR Borrowing”) or by Class and Type (e.g., a “SOFR Term Borrowing”).

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any agreement (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04 Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP.

(b) [Reserved.]

(c) Where reference is made to “the Borrower and the Restricted Subsidiaries on a consolidated basis” or similar language, such consolidation shall not include any Subsidiaries of the Borrower other than the Restricted Subsidiaries.



(d) In the event that the Borrower elects to prepare its financial statements in accordance with IFRS and such election results in a change in the method of calculation of financial covenants, standards or terms (collectively, the “Accounting Changes”) in this Agreement, the Borrower and the Administrative Agent agree to enter into good faith negotiations in order to amend such provisions of this Agreement so as to reflect equitably the Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be substantially the same after such change as if such change had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed in accordance with GAAP (as determined in good faith by a Responsible Officer of the Borrower) (it being agreed that the reconciliation between GAAP and IFRS used in such determination shall be made available to Lenders) as if such change had not occurred.

SECTION 1.05 Effectuation of Transactions. All references herein to Holdings, the Borrower and their subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of Holdings, any Intermediate Parents, the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Effective Date, unless the context otherwise requires.

SECTION 1.06 Currency Translation; Rates.

(a) For purposes of any determination under Article V, Article VI or Article VII or any determination under any other provision of this Agreement, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at the Spot Rate (rounded to the nearest currency unit, with 0.5 or more of a currency unit being rounded upward); *provided, however*, that for purposes of determining compliance with Article VI with respect to the amount of any Indebtedness, Investment, Disposition, Restricted Payment or Restricted Debt Payment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred or Disposition, Restricted Payment or Restricted Debt Payment is made; *provided further*, that, for the avoidance of doubt, the foregoing provisions of this Section 1.06 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred or Disposition, Restricted Payment or Restricted Debt Payment made at any time under such Sections. For purposes of any determination of Consolidated Total Debt, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered financial statements pursuant to Section 5.01(a) or Section 5.01(b). Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower’s consent (such consent not to be unreasonably withheld) to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

(b) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Term SOFR Rate” or with respect to any comparable or successor rate thereto, except as expressly provided herein.

SECTION 1.07 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including



any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.08 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.09 Collateral Located in the Province of Québec. For purposes of any Collateral located in the Province of Québec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "tangible property" shall be deemed to include "corporeal property", (c) "intangible property" shall be deemed to include "incorporeal property", (d) "security interest" and "mortgage" shall be deemed to include a "hypothec", (e) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (f) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (g) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (h) an "agent" shall be deemed to include a "mandatary", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) "construction liens" shall be deemed to include "legal hypothecs in favor of persons having taken part in the construction or renovation of an immovable"; (k) "joint and several" shall be deemed to include solidary; (l) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault"; (m) "beneficial ownership" shall be deemed to include "ownership"; (n) "easement" shall be deemed to include a servitude; (o) "priority" shall be deemed to include "rank" or "prior claim", as applicable; (p) "survey" shall be deemed to include "certificate of location and plan"; (q) "state" shall be deemed to include "province"; (r) "fee simple title" shall be deemed to include "absolute ownership"; (s) "legal title" shall be deemed to include "holding title as mandatary or prête-nom on behalf of an owner" (t) "leasehold interest" shall be deemed to include "rights resulting from a lease"; and (u) "lease" shall be deemed to include a "contract of leasing (crédit-bail)".

## ARTICLE II THE CREDITS

SECTION 2.01 Commitments.



(a) Subject to the terms and conditions set forth herein, each Lender agrees to make a Term Loan denominated in Dollars to the Borrower on the Effective Date in a principal amount not exceeding its Initial Term Loan Commitment. Amounts repaid or prepaid in respect of Loans may not be reborrowed. Upon a Lender's funding of a Term Loan on the Effective Date, such Lender's Initial Term Loan Commitment shall be permanently reduced to zero and shall terminate as of the Effective Date.

(b) On the Effective Date, concurrently with the making of the Initial Term Loans pursuant to Section 2.01(a) above, (x) \$36,000,000 in aggregate principal amount of Prepetition Priority Loans and all accrued and unpaid interest with respect to the Prepetition Priority Loans shall be deemed converted into and exchanged for Term Loans under this Agreement (the Prepetition Priority Loans and accrued and unpaid interest rolled-up pursuant to this Section 2.01(b), the "Roll-Up Loans"), and Roll-Up Loans in such principal amount shall be deemed funded on the Effective Date, without constituting a novation, and shall satisfy and discharge in full all Prepetition Priority Loans and (y) \$14,000,000 in aggregate principal amount of Prepetition Priority Loans held in the Loan Proceeds Account (as defined in that certain Escrow Agreement, dated as of May 4, 2023, by the Borrower and the Escrow Agent (the "Existing Escrow Agreement")) shall be transferred to the Borrower's account as specified in such Existing Escrow Agreement on the Effective Date and an equal amount of Term Loans shall be deemed advanced to the Borrower (collectively, the "Transferred Loans"). Each of the Roll-Up Loans and the Transferred Loans will constitute Term Loans under this Agreement and will have identical terms as the Initial Term Loans.

(c) Amounts repaid or prepaid in respect of any Term Loans may not be reborrowed.

#### SECTION 2.02 Loans and Borrowings; Roll Up.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Facility, Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Facility and Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, *provided* that the Commitments of the Lenders are several and, other than as expressly provided herein with respect to a Defaulting Lender, no Lender shall be responsible for any other Lender's failure to make Loans as required hereby.

(b) Subject to Section 2.12, each Borrowing shall be comprised entirely of ABR Loans or SOFR Loans as the Borrower may request in accordance herewith; *provided* that all Borrowings made on the Effective Date must be made as ABR Borrowings unless the Borrower shall have given the notice required for a SOFR Borrowing under Section 2.03.

(c) At the commencement of each Interest Period for any Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; *provided* that a SOFR Borrowing that results from a continuation of an outstanding SOFR Borrowing may be in an aggregate amount that is equal to such outstanding Borrowing. ABR Borrowings may be in any amount. Borrowings of more than one Type may be outstanding at the same time; *provided* that there shall not at any time be more than a total of 3 SOFR Borrowings outstanding under a Facility at the same time.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing under a Facility if the Interest Period requested with respect thereto would end after the Maturity Date for such Facility.

(e) Interest shall begin to accrue on the Roll-Up Loans from (and including) the date such Roll-Up Loans are deemed made in accordance with Section 2.01(b) (which shall be upon entry of the Interim Order).



SECTION 2.03 Request for Borrowings.

(a) To request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing not later than 3:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing, which Borrowing (or such shorter period of time as may be agreed to by the Administrative Agent (acting at the Direction of the Required Lenders)). Each such Borrowing Request shall be irrevocable and shall be delivered by hand delivery, facsimile or other electronic transmission to the Administrative Agent and shall be signed by the Borrower. Each such Borrowing Request shall specify the following information:

(i) the Facility, Class and Type of Loans to be borrowed or to which existing Loans are to be converted;

(A) the aggregate amount of such Borrowing;

(B) the date of such Borrowing, which shall be a Business Day;

(C) [reserved]; and

(D) in the case of a SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period".

If no Interest Period is specified with respect to any requested SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. If no currency is specified with respect to any requested SOFR Borrowing, then the Borrower shall be deemed to have requested that the Borrowing be denominated in Dollars. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the applicable Facility and Class of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Funding of Borrowings.<sup>2</sup>

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds in Dollars by 2:00 p.m., New York City time to the Applicable Account of the Administrative Agent most-recently designated by it for such purpose by notice to the Lenders.

(b) Upon receipt of funds from each Lender in accordance with Section 2.04(a) above, the Administrative Agent shall fund the net proceeds of the Effective Date Direct Borrowing in accordance with the Flow of Funds Statement, and the net proceeds of the Initial Term Loans less the amount of the Effective Date Direct Borrowing shall be deposited in the Loan Proceeds Account pursuant to the Escrow Agreement.

(c) Unless the Administrative Agent shall have been notified by any Lender prior to the date of any such Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing to be made on the Effective Date, the Administrative Agent shall assume that such Lender has made such amount available to the Administrative Agent on the Effective Date, and the Administrative Agent, in reliance upon such assumption, shall make such amount available to the Borrower and/or make a deposit into the Loan Proceeds Account a corresponding amount. If such corresponding

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<sup>2</sup> NTD: All fee and expense payments shall reduce the amount of the Effective Date Direct Borrowing.



amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made such amount available to the Borrower and/or deposited such amount into the Loan Proceeds Account, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent in Dollars. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if paid by such Lender, the Overnight Bank Funding Rate or (ii) if paid by the Borrower, the then applicable rate of interest or fees, calculated in accordance with Section 2.11, for the respective Loans. For the avoidance of doubt, all parties agree that all Loans shall be funded and accrue interest starting on the Effective Date, including any Loans the proceeds of which have been deposited into the Loan Proceeds Account.

SECTION 2.05 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section; provided that, notwithstanding anything to the contrary herein, no Loan may be converted into or continued as a Loan denominated in a different currency but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and confirmed promptly to the Administrative Agent by hand delivery, facsimile or other electronic transmission to the Administrative Agent in the form of a written Interest Election Request signed by the Borrower.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.03:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a SOFR Borrowing; and



(iv) if the resulting Borrowing is to be a SOFR Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period.”

If any such Interest Election Request requests a SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a SOFR Borrowing denominated in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing.

Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, with respect to Loans denominated in Dollars, (i) no outstanding Borrowing under any Facility may be converted to or continued as a SOFR Borrowing and (ii) unless repaid, each SOFR Borrowing of Loans shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.06 [Reserved].

SECTION 2.07 Repayment of Loans; Evidence of Debt.

(a) [Reserved].

(b) Term Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender as provided in Section 2.08.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof, the currency thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(e) The entries made in the accounts maintained pursuant to paragraphs (c) or (d) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein, *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement. In the event of any inconsistency between the entries made pursuant to paragraphs (c) and (d) of this Section, the accounts maintained by the Administrative Agent pursuant to paragraph (d) of this Section shall control.



(f) Any Lender may request through the Administrative Agent that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form provided by the Administrative Agent and approved by the Borrower.

SECTION 2.08 Amortization of Term Loans.

(a) [Reserved].

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Maturity Date applicable to such Term Loans, or, if such date is not a Business Day, on the next preceding Business Day.

(c) Any prepayment of a Borrowing of any Class of Term Loans (i) pursuant to Section 2.09(a) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Borrowings of such Class of Term Loans to be made pursuant to this Section as directed by the Borrower (and absent such direction in direct order of maturity) and (ii) pursuant to Section 2.09(b) or 2.09(c) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Borrowings of such Class of Term Loans to be made pursuant to this Section in direct order of maturity.

(d) Prior to any repayment of any Borrowings of any Class of Term Loans hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class of Term Loans to be repaid and shall notify the Administrative Agent in writing (via hand delivery or facsimile) of such election not later than 3:00 p.m., New York City time, two Business Day before the scheduled date of such repayment. Each repayment of a Borrowing of Term Loans shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Borrowings of Term Loans shall be accompanied by accrued interest on the amount repaid.

SECTION 2.09 Prepayment of Loans.

(a) The Borrower may prepay any Borrowing in whole or in part, without premium or penalty.

(b) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings, any Intermediate Parents, the Borrower or any of the Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term "Prepayment Event," on the date of such Prepayment Event), prepay Term Loans in an aggregate amount equal to 100% of the amount of such Net Proceeds; *provided* that, pending such prepayment, the Borrower shall hold such Net Proceeds in a deposit account subject to an Account Control Agreement (to the extent the assets sold were Collateral).

(c) [Reserved].

(d) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (e) of this Section. In the event of any mandatory prepayment of Term Loans made at a time when more than one Class of Term Loans remain outstanding, the Borrower shall select the Loans to be prepaid so that the aggregate amount of such prepayment is allocated between such Classes of Term Loans pro rata based on the aggregate principal amount of outstanding Borrowings of each such Class; *provided* that any Lender may elect, by notice to the Administrative Agent in writing (via hand delivery or facsimile) at least one Business Day prior to the prepayment date, to decline all or any portion



of any prepayment of its Loans of any such Class pursuant to this Section (other than an optional prepayment pursuant to paragraph (a) of this Section or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Loans of any such Class but was so declined may be retained by the Borrower and the Restricted Subsidiaries (such amounts, “Retained Declined Proceeds”). Optional prepayments of Borrowings shall be allocated among the Classes of Borrowings as directed by the Borrower.

(e) The Borrower shall notify the Administrative Agent in writing (via hand delivery, facsimile or other electronic communication) of any prepayment hereunder (i) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment and (ii) in the case of prepayment of a SOFR Borrowing, not later than 11:00 a.m. (New York City time), three Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; *provided that*, so long as the Administrative Agent is notified prior to the prepayment date, a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type and currency as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11. At the Borrower’s election in connection with any prepayment pursuant to this Section 2.09, such prepayment shall not be applied to any Loan of a Defaulting Lender and shall be allocated ratably among the relevant non-Defaulting Lenders.

(f) Notwithstanding any other provisions of Section 2.09(b) or (c), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event set forth in clause (a) of the definition thereof by a Foreign Subsidiary giving rise to a prepayment pursuant to Section 2.09(b) (a “Foreign Prepayment Event”) are prohibited or delayed by any Requirement of Law from being repatriated to the Borrower, the portion of such Net Proceeds so affected will not be required to be applied to repay Loans at the times provided in Section 2.09(b) or (c), as the case may be, and such amounts may be retained by the applicable Foreign Subsidiary so long as the applicable Requirement of Law will not permit repatriation to the Borrower (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable Requirement of Law to permit such repatriation), and to the extent such repatriation of any of such affected Net Proceeds becomes permitted under the applicable Requirement of Law, such repatriation will be promptly effected and such repatriated Net Proceeds will be promptly (and in any event not later than three Business Days after such repatriation) applied (net of additional Taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.09(b) or (c), as applicable, and (B) to the extent that and for so long as the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) reasonably agree that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds, the Net Proceeds so affected will not be required to be applied to repay Loans at the times provided in Section 2.09(b) or (c), as the case may be, and such amounts may be retained by the applicable Foreign Subsidiary; *provided that* if the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) agree that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event would no longer have a material adverse tax consequence (taking into account



any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds, such Net Proceeds shall be promptly (and in any event not later than three Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.09(b) or (c), as applicable.

SECTION 2.10 Fees.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and each applicable Agent).

(e)

(i) The Borrower agrees to pay to the Administrative Agent, for the account of the funds and/or accounts affiliated with, or managed and/or advised by, the entities set forth on Schedule 2.10(b), on file with the Administrative Agent (the “Backstop Allocation Schedule”, and such entities, together with their respective successors and permitted assignees, or any fronting bank or other funding agent operating on their behalf, the “Backstop Parties”) ratably in accordance with the amounts set forth opposite each such Backstop Party’s name on the Backstop Allocation Schedule, on the Effective Date a non-refundable fee equal to 6.0% of the Initial Term Loans actually provided to the Borrower on the Effective Date (which, for the avoidance of doubt, includes any Initial Term Loans the proceeds of which are deposited into the Loan Proceeds Account), which fee shall be earned, due and payable in cash on, and subject to the occurrence of, the Effective Date (the “Backstop Fee”); provided that, for the avoidance of doubt, no Backstop Fee shall be payable with respect to the Roll-Up Loans or the Transferred Loans.

(ii) The Borrower agrees to pay to the initial Lender hereunder, for the account of such Lender, the fees set forth in a separate fee letter with such initial Lender.

(iii) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a non-refundable commitment fee equal to 3.0% of the Initial Term Loans actually provided to the Borrower on the Effective Date (which, for the avoidance of doubt, includes any Initial Term Loans the proceeds of which are deposited into the Loan Proceeds Account), which fee shall be earned, due and payable in cash on, and subject to the occurrence of, the Effective Date (the “Commitment Fee”); provided that, for the avoidance of doubt, no Commitment Fee shall be payable with respect to the Roll-Up Loans or the Transferred Loans.

(f) All such fees pursuant to clause (e)(i) and clause (e)(iii) above shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of such fees shall be refundable under any circumstances.



SECTION 2.11 Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each SOFR Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2.00% per annum plus the rate applicable to Term Loans that are ABR Loans as provided in paragraph (a) of this Section; *provided* that no amount shall be payable pursuant to this Section 2.11(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, *provided* that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. Notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, Loans, the proceeds of which are held in the Loan Proceeds Account, shall be deemed to be made and funded hereunder on the Effective Date and shall accrue interest in accordance with Section 2.13 from the Effective Date.

(e) All computations of interest for ABR Loans (including ABR Loans determined by reference to the Term SOFR Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.16, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(f) To the extent applicable, for the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or any other period of time less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or such other period, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

SECTION 2.12 Benchmark Replacement. If at least two Business Days prior to the commencement of any Interest Period for a SOFR Borrowing:



(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate for such Interest Period with respect to a Borrowing; or

(ii) the Administrative Agent is advised by the Required Lenders that the Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, "Impacted Loans"),

then, in the case of clause (a) or (b) above, the Administrative Agent shall give notice thereof (and, if requested by the Borrower, reasonably acceptable evidence of such determination) to the Borrower and the Lenders by telephone, facsimile or other electronic communication as promptly as practicable thereafter.

Upon receipt of such notice and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing shall be ineffective and (ii) all Borrowings denominated in Dollars shall be made as an ABR Borrowing and the utilization of the Term SOFR Rate component in determining the Alternate Base Rate shall be suspended.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is based upon Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with the use, administration, adoption or implementation of Term SOFR, the Administrative Agent (at the Direction of the Required Lenders) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use or administration of Term SOFR.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.12(d) and (v) the commencement of any



Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a SOFR Borrowing into a request for a Borrowing of or conversion to an ABR Borrowing. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any SOFR Loan is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to the Term SOFR Rate, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.12, any SOFR Loan shall on the last day of the Interest Period applicable to such Loan be converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day.

#### SECTION 2.13 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Term SOFR Rate); or

(ii) impose on any Lender or the applicable interbank market any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or SOFR Loans; or

(iii) subject any Lender to any Taxes on its Loans, letters of credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;



and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such increased costs actually incurred or reduction actually suffered, *provided* that to the extent any such costs or reductions are incurred by any Lender as a result of any requests, rules, guidelines or directives enacted or promulgated under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Basel III after the Effective Date, then such Lender shall be compensated pursuant to this Section 2.13(a) only to the extent such Lender is imposing such charges on similarly situated borrowers under the other syndicated credit facilities under which such Lender is a lender. Notwithstanding the foregoing, this paragraph will not apply to (A) Indemnified Taxes or Other Taxes or (B) Excluded Taxes.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity requirements), then, from time to time upon request of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's for any such reduction actually suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or such Lender's holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14 Syndication. Following the Effective Date, the Borrower shall use commercially reasonable efforts to assist the Backstop Parties in connection with the Primary Syndication for the assignment of a proportionate share of Loans in accordance with the Primary Syndication Procedures. Upon completion of the Primary Syndication, a revised Schedule 2.01, which shall be prepared by the Specified Lender Advisors and satisfactory to the Required Lenders, shall be delivered to the Administrative Agent and the Borrower, which shall set for the aggregate principal amount of Commitments and Term Loans held by each Lender upon closing of the Primary Syndication.

SECTION 2.15 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Requirements of Law. If the applicable Withholding Agent shall be required by applicable Requirements of Law to withhold or deduct any Taxes from such payments, then (i) the applicable Withholding Agent shall make such withholdings or deductions, (ii) the applicable Withholding



Agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law and (iii) if the Tax in question is an Indemnified Tax or Other Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after all required deductions of Indemnified Taxes or Other Taxes have been made (including deductions applicable to additional amounts payable under this Section 2.15) the Administrative Agent and any applicable Lender receives an amount equal to the sum it would have received had no such withholdings or deductions of Indemnified Taxes or Other Taxes been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law, or at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes.

(c) Without duplication of amounts paid by the Borrower pursuant to Sections 2.15(a) or (b), the Borrower shall indemnify the Administrative Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) payable or paid by, or required to be withheld from a payment to, the Administrative Agent or such Lender, as the case may be, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any Lender seeking indemnity pursuant to this Section 2.15(c) shall promptly notify the Borrower of the imposition of the relevant Indemnified Taxes or Other Taxes. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.15, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.15(e)(ii)(1), (ii)(2) and (ii)(4) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the foregoing:

(1) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from



time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(2) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code shall to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) in the case of such a Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty,

(B) executed copies of IRS Form W-8ECI,

(C) in the case of such a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit P-1 to the effect that such Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, or

(D) to the extent such Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-2 or Exhibit P-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-4 on behalf of each such direct and indirect partner;

(3) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and



(4) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (4), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(ii) The Administrative Agent shall deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement, either: (1) two duly completed copies of IRS Form W-9, or (2) two duly completed copies of IRS Form W-8IMY, with the effect that the Borrower may make payments to the Administrative Agent, to the extent such payments are received by the Administrative Agent as an intermediary, without deduction or withholding of any Taxes imposed by the United States. The Administrative Agent, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 30 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses



arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (g).

(h) The agreements in this Section 2.15 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. For the avoidance of doubt, for purposes of this Section 2.15, the term "Requirements of Law" includes FATCA.

SECTION 2.16 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees, or of amounts payable under Section 2.13 or 2.15, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m. (New York City time)), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent (at the Direction of the Required Lenders), be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to such account as may be specified by the Administrative Agent. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment (other than payments on the SOFR Loans) under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension. Except as otherwise expressly provided herein, all such payments shall be made in Dollars to such account as may be specified by the Administrative Agent.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due under any Facility, such funds shall be applied, (1) first, towards payment of interest and fees then due under such Facility, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (2) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans of a given Class resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and accrued interest thereon than the proportion received by any other Lender with outstanding Loans of the same Class, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of such Class to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class, *provided that* (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in



accordance with the express terms of this Agreement (including the application of funds arising from existence of a Defaulting Lender), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans of that Class or any increase in the Applicable Rate in respect of Loans. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Alternate Base Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(a), 2.04(b), 2.16(d) or 9.03(c), then the Administrative Agent may, in its discretion and in the order determined by the Administrative Agent (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

(f) After the occurrence and during the continuation of an Event of Default, monies to be applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, set-off or otherwise, shall be allocated as follows (subject, in all respects, to the Carve-Out and the CCAA Administration Charge):

(i) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Agents in their capacity as such, until paid in full;

(ii) Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them, until paid in full;

(iii) Third, to pay interest and principal due in respect of Term Loans, until paid in full;

(iv) Fourth, to pay all other Obligations that are due and payable, until paid in full; and



(v) Fifth, the balance, if any, as required by the intercreditor agreement(s) or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns)..

Amounts shall be applied to each category of Obligations set forth above until paid in full and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied pro rata among the Obligations in the category. The allocations set forth in this Section 2.16(f) are solely to determine the rights and priorities of the Agents and Lenders as among themselves and may be changed by agreement among the Agents and all of the Lenders without the consent of any Loan Party.

SECTION 2.17 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority or other recipient for the account of any Lender pursuant to Section 2.15 or any event that gives rise to the operation of Section 2.21, then following request by the Borrower such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder affected by such event, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or Section 2.15 or mitigate the applicability of Section 2.21, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.13 or gives notice under Section 2.21, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority or other recipient for the account of any Lender pursuant to Section 2.15, or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation), *provided* that (A) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consents, in each case, shall not unreasonably be withheld or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued but unpaid interest thereon, accrued but unpaid fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (C) the Borrower or such assignee shall have paid (unless waived) to the Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) in the case of any such assignment resulting from a claim for compensation under Section 2.13, payment required to be made pursuant to Section 2.15 or a notice given under Section 2.21, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.



SECTION 2.18 Super Priority Nature of Obligations and Administrative Agent's Liens; Payment of Obligations. The priority of the Administrative Agent's Liens on the Collateral, claims and other interests shall be as set forth in the DIP Orders (and, for the avoidance of doubt, are subject to the Carve-Out and the CCAA Administration Charge). Subject to the terms of the DIP Orders, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, the Administrative Agent and the Lenders shall be entitled to immediate payment of such Obligations without application to or order of the Bankruptcy Court.

SECTION 2.19 Extension of Maturity Date. The Borrower may, with the consent of the Required Lenders and by notice to the Administrative Agent not later than the date that is 5 Business Days prior to the then-existing date set forth in clause (i) of the definition of Maturity Date, elect to extend such date to the date that is up to 1 month after such then-existing date (the "Extended Maturity Date").

(a) Upon such election (the "Extension Effective Date"), subject to the satisfaction (or waiver by the Required Lenders) of each of the following conditions, the date set forth in clause (i) of the definition of Maturity Date shall be extended to the Extended Maturity Date:

(i) The Borrower shall pay to the Administrative Agent, for the account of each Lender, a consent fee equal to 1.00% of the aggregate principal amount of the Term Loans held by such Lender on the date of such extension, with such fee payable in kind in additional amounts of Term Loans;

(ii) On and as of the Extension Effective Date, no Default or Event of Default shall have occurred and be continuing; and

(iii) Delivery of an updated Approved Budget.

(b) Notwithstanding anything to the contrary in this Section 2.19, the Borrower may extend the date set forth in clause (i) of the definition of Maturity Date no more than three times pursuant to this Section 2.19.

SECTION 2.20 Defaulting Lenders.

(a) General. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.02.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, [reserved]; third, [reserved]; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan under the relevant Facility in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the



Administrative Agent and the Borrower, to be held in a deposit account subject to an Account Control Agreement and released in order to satisfy obligations of that Defaulting Lender to fund Loans under the relevant Facility; sixth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, subject to the last sentence of Section 2.09(e), to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction.

(iii) Certain Fees. That Defaulting Lender shall not be entitled to receive or accrue any commitment fee pursuant to Section 2.10(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure.

(i) If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(ii) [Reserved].

SECTION 2.21 Illegality. If any Lender reasonably determines that any law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, the Term SOFR Rate (whether denominated in Dollars), or to determine or charge interest rates based upon the Term SOFR Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Term SOFR Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon three Business Days' notice from such Lender (with a copy to the Administrative Agent), prepay or (I) if applicable and such Loans are denominated in Dollars, convert all SOFR Loans denominated in Dollars of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, or (II), and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term SOFR Rate, the Administrative Agent shall during the period of such suspension compute the



Alternate Base Rate applicable to such Lender without reference to the Term SOFR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate. Each Lender agrees to notify the Administrative Agent and the Borrower in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.22 [Reserved].

SECTION 2.23 [Reserved].

SECTION 2.24 [Reserved].

SECTION 2.25 [Reserved].

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Lenders as of the Effective Date (after giving effect to the Transactions) that:

SECTION 3.01 Organization; Powers. Each of Holdings, each Intermediate Parent (if any), the Borrower and each Restricted Subsidiary is (a) duly organized or incorporated (as applicable), validly existing and in good standing (to the extent such concept exists in the relevant jurisdictions) under the laws of the jurisdiction of its organization, (b) subject to any restriction arising on account of Holdings', the Borrower's or any Subsidiary's status as a "debtor" under the U.S. Bankruptcy Code, has the corporate or other organizational power and authority to carry on its business as now conducted and subject to the entry of the DIP Order and the terms thereof, to execute, deliver and perform its obligations under each Loan Document to which it is a party, and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the case of clause (a) (other than with respect to any Loan Party), clause (b) (other than with respect to Holdings and the Borrower and any other Loan Party in the case of the execution and delivery of any Loan Document to which it is a party) and clause (c), where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02 Authorization; Enforceability. Subject to the entry of the DIP Order and the terms thereof, this Agreement and each other Loan Document has been duly authorized, executed and delivered by each of Holdings, each Intermediate Parent, the Borrower and each other Loan Party party thereto and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Holdings, such Intermediate Parent, the Borrower or such Loan Party, as the case may be, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental and Third-Party Approvals; No Conflicts. Subject to the entry of the DIP Order and the terms thereof, the execution, delivery and performance of the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or third-party, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate



(i) the Organizational Documents of Holdings, the Borrower or any other Loan Party, or (ii) any Requirements of Law applicable to Holdings, the Borrower or any other Loan Party or any of its Restricted Subsidiaries, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon Holdings, the Borrower or any other Loan Party or any of its Subsidiaries or their respective assets, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of Holdings, the Borrower or any other Loan Party or any of its Subsidiaries, except Liens created under the Loan Documents or otherwise permitted under Section 6.02, except (in the case of each of clauses (a), (b)(ii) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right as the case may be, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.04 Financial Condition; No Material Adverse Effect.

(a) The Historical Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly indicated therein, including the notes thereto, and (ii) fairly present in all material respects the financial condition of the Borrower and its Restricted Subsidiaries as of the respective dates thereof and the consolidated results of their operations for the respective periods then ended in accordance with GAAP consistently applied during the periods referred to therein, except as otherwise expressly indicated therein, including the notes thereto.

(b) As of the Effective Date, all material written factual information (other than projections, estimates, other forward-looking information and information of a general economic nature or industry specific nature, the “Information”) that has been made available to any Lenders, the Specified Lender Advisors or the Administrative Agent, directly or indirectly, by, or at the request of, Holdings, the Borrower or any of its Subsidiaries or by any of their respective representatives on behalf of Holdings, the Borrower or any of its Subsidiaries, in connection with the Loans or other transactions contemplated hereby, when taken as a whole, after giving effect to all supplements and updates provided thereto, was correct in all material respects as of the date such Information, supplement or update was furnished to such Persons and did not, taken as a whole as of such date contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto); provided that, with respect to any projections, Holdings and the Borrower represent only that such projections, when taken as a whole, were prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered, it being understood that (i) such projections are merely a prediction as to future events and are not to be viewed as facts or a guarantee of performance, (ii) such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries and (iii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

(c) [Reserved].

(d) Other than as disclosed in writing to the Specified Lender Advisors and/or the Term Lenders prior to the Effective Date, since the last day of the fiscal year ending closest to December 31, 2022, there has been no Material Adverse Effect.

SECTION 3.05 Properties; Insurance.

(a) Except for a default arising from the Chapter 11 Cases, each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary has good title to, or valid leasehold or subleasehold,



as applicable, interests in, all its real and personal property material to its business (including the Mortgaged Properties, if any), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, which such defects in title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Effective Date, Schedule 3.05 contains a true and complete list of all Material Real Property owned by the Borrower and its Subsidiaries.

(c) Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary maintains in effect insurance that complies, in all material respects, with the requirements of Section 5.07.

#### SECTION 3.06 Litigation and Environmental Matters.

(a) Except for the Chapter 11 Cases and the Canadian Recognition Proceeding, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Responsible Officer of Holdings or the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) has, to the knowledge of a Responsible Officer of Holdings or the Borrower, any basis to reasonably expect that Holdings, the Borrower or any Restricted Subsidiary will become subject to any Environmental Liability.

SECTION 3.07 Compliance with Laws and Agreements. Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary is in compliance with (a) its Organizational Documents, (b) all Requirements of Law applicable to it or its property and (c) all indentures and other agreements and instruments binding upon it or its property, except, in the case of clauses (b) and (c) of this Section, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08 Investment Company Status. None of Holdings, the Intermediate Parents, the Borrower or any other Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended from time to time.

SECTION 3.09 Taxes. Except pursuant to an order of the Bankruptcy Court or pursuant to the U.S. Bankruptcy Code, Canadian Bankruptcy and Insolvency Law or except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns required to have been filed and (b) have paid or caused to be paid all Taxes required to have been paid (whether or not shown on a Tax return) including in their capacity as tax withholding agents, except any Taxes (i) that are not overdue by more than 30 days or (ii) that are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Holdings, the Borrower or such Restricted Subsidiary, *provided* that Holdings, such Intermediate Parent, the Borrower or such Restricted Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP.



SECTION 3.10 ERISA.

(a) Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur, (ii) no Plan has failed to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived, (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(c) With respect to any Foreign Pension Plan, as of the date hereof, except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) each such plan is in compliance with all requirements of law applicable and the respective requirements of the governing documents for such plan, (ii) none of any Loan Party or any of their Subsidiaries, Foreign Subsidiaries or any of their respective directors, officers, employees or agents has engaged in a transaction which would subject any Loan Party or any of its Subsidiaries or Foreign Subsidiaries, directly or indirectly, to a material tax or civil penalty, (iii) reserves have been established in the financial statements furnished to Lenders in respect of any unfunded liabilities in accordance with applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained, and (iv) the present aggregate value of accumulated benefit obligations of all Foreign Pension Plans did not, as of the most recent statements available, exceed the aggregate value of the assets for all such Foreign Pension Plans.

(d) No Loan Party has established, administered, sponsored, maintained or contributed to any Canadian Defined Benefit Plan and no Credit Party has any liability in respect of any Canadian Defined Benefit Plan, contingent or otherwise.

SECTION 3.11 Disclosure. As of the Effective Date, no report, financial statements, certificates or other written information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading, *provided* that, with respect to projected financial information, Holdings and the Borrower represent only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, it being understood that any such projected financial information relates to future events and are not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, no assurance can be given that any particular projected financial information will be realized and that actual results during the period or periods covered thereby may differ significantly from the corresponding projected financial information and such differences could be material.



SECTION 3.12 Subsidiaries. As of the Effective Date, Schedule 3.12 sets forth the name of each Subsidiary and the registered ownership interest of Holdings, each Intermediate Parent, the Borrower or another Subsidiary in each Subsidiary.

SECTION 3.13 Intellectual Property; Licenses, Etc. Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary owns, licenses or possesses the right to use all of the Intellectual Property that is reasonably necessary for the operation of its business as currently conducted, and, without conflict with the rights of any Person, except to the extent the failure to have any such rights or such conflicts, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Holdings, the Borrower or any Restricted Subsidiary do not and will not, in the operation of their businesses as currently conducted, infringe upon, misuse, dilute, misappropriate or otherwise violate any Intellectual Property rights held by any Person except for such infringements, misuses, dilutions, misappropriations or violations that, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the Intellectual Property owned by Holdings, the Intermediate Parents, the Borrower or any of the Restricted Subsidiaries is pending or, to the knowledge of any Responsible Officer of Holdings or the Borrower, threatened in writing against Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.14 [Reserved].

SECTION 3.15 [Reserved].

SECTION 3.16 Federal Reserve Regulations. None of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, to purchase or carry any margin stock or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

SECTION 3.17 Use of Proceeds. The Borrower will use the proceeds of the Loans made on the Effective Date to (i) pay fees, interest and other amounts payable under this Agreement, (ii) provide working capital for, and for other general corporate purposes of, the Borrower and its Subsidiaries, including for funding the Carve-Out, the CCAA Administration Charge and payment of any Adequate Protection Obligations, in each case of clauses (i) and (ii), in accordance with, and subject to, the DIP Order and the Approved Budget (subject to any Permitted Variance), and (iii) in the case of the Roll-Up Loans in exchange for (and to satisfy and discharge) Prepetition Priority Loans.

SECTION 3.18 PATRIOT Act, OFAC and FCPA.

(a) The Borrower will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of funding (i) any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) any other transaction that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(b) The Borrower and the Restricted Subsidiaries will not use the proceeds of the Loans directly, or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or



employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or any other applicable anti-corruption laws.

(c) None of Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries has, in the past three years, committed a violation of applicable Sanctions, Title III of the USA Patriot Act or the FCPA or any other applicable anti-corruption laws.

(d) None of Holdings, the Intermediate Parents, the Borrower or any of the Subsidiaries, or, to the knowledge of the Borrower, any director, officer, employee or agent of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary is an individual or entity currently on the list of Specifically Designated Nationals and Blocked Persons administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) or any other Sanctions list, nor is Holdings, the Borrower or any Restricted Subsidiary located, organized or resident in a country or territory that is the subject of comprehensive Sanctions.

#### SECTION 3.19 Security Documents.

(a) Subject to the entry or execution thereof, the DIP Order and any applicable Security Documents creates in favor of the Collateral Agent (for the benefit of the Secured Parties), in each case, a legal, valid and enforceable security interest in and Liens on the Collateral described therein and proceeds thereof, which security interest and Lien shall be valid and perfected as of the Effective Date by entry of the DIP Order and/or execution of the applicable Security Document with respect to each Loan Party and which shall constitute a continuing security interest and Lien on the Collateral having priority over all other security interests and Liens on the Collateral and securing all the Obligations, other than as set forth in the DIP Order or the applicable Secured Documents. The Collateral Agent and Lenders shall not be required to file or record any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the security interest and Lien granted pursuant to the DIP Order.

(b) Pursuant to Section 364(c)(1) of the U.S. Bankruptcy Code, the Obligations of the Loan Parties shall at all times constitute allowed senior administrative expenses against each of the Loan Parties in the Chapter 11 Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority over any and all other administrative expenses, adequate protection claims, diminution claims and all other claims against the Loan Parties, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the U.S. Bankruptcy Code, and over any and all other administrative expense claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 of the U.S. Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment, which allowed claims shall for purposes of Section 1129(a)(9)(A) of the U.S. Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the U.S. Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Loan Parties and their estates and all proceeds thereof other than as set forth in the DIP Order.

(c) Except as otherwise expressly provided hereby or under any other Loan Documents, the provisions of the UK Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable UK Collateral Documents, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable perfected first priority Lien



(subject to Liens permitted by Section 6.02) on all right, title and interest of the applicable Subsidiary Loan Parties, respectively, in the Collateral described therein.

SECTION 3.20 Bankruptcy Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance in all material respects with applicable law and proper notice thereof was given. Proper notice was also provided for (x) the motion seeking approval of the Loan Documents pursuant to the DIP Order and the application seeking approval of the Canadian Interim Orders and (y) the hearing for the approval of the DIP Order and the Canadian Interim Orders.

(b) After entry of the Interim Order (and the Final Order when applicable) and pursuant to and to the extent provided in the Interim Order and the Final Order, as applicable, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral, (i) encumbered by no Liens other than Liens permitted by Section 6.02 and (ii) prior and superior to any other Person or Lien pursuant to Section 364(d)(1) of the Bankruptcy Code, in each case, other than the Carve-Out and the CCAA Administration Charge and subject to the priorities set forth in the Interim Order or the Final Order, as applicable. After the entry of the Canadian Supplemental Order (and the Canadian Final Order when applicable), and pursuant to and to the extent provided in the Canadian Supplemental Order and the Canadian Final Order, as applicable, the Obligations of the Canadian Guarantors hereunder will be secured by a valid and perfected first priority Lien on all of the Collateral located in Canada, (i) encumbered by no Liens other than the Permitted Liens and (ii) prior and superior to any other Person or Lien, in each case, other than the Carve-Out and the CCAA Administration Charge.

(c) The Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (with respect to the period on and after the entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without the Administrative Agent and Required Lenders' consent (which consent of the Required Lenders may be communicated via a Direction of the Required Lenders). The Canadian Supplemental Order (with respect to the period prior to the entry of the Canadian Final Order) or the Canadian Final Order (with respect to the period on and after the entry of the Canadian Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without Administrative Agent and Required Lender consent (which consent of the Required Lenders may be communicated via an email from either of the Specified Lender Advisors).

(d) A true and complete copy of the initial budget, as agreed to with the Required Lenders as of the Effective Date, is attached as Schedule 3.20 hereto (the "Initial Budget").

ARTICLE IV  
CONDITIONS

SECTION 4.01 Effective Date. The effectiveness of this Agreement and the obligations of each Lender to make Initial Term Loans (or to be deemed to have made Roll-Up Loans) on the Effective Date is subject to the satisfaction or waiver by the Required Lenders in their respective sole discretion and, with respect to any condition affecting the rights and duties of the Administrative Agent, the Administrative Agent, any which waiver by the Required Lenders and the satisfaction of the Required Lenders, with any document described in clauses (a)-(l) below, as applicable, which may be communicated by a Direction of the Required Lenders, of the following conditions:



(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and the Guarantee Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement and the Guarantee Agreement.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Kirkland & Ellis LLP, New York counsel for the Loan Parties, Polsinelli PC, Missouri counsel to the Loan Parties and Gowling WLG (Canada) LLP, Canadian counsel for the Loan Parties. The Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received a certificate of each Loan Party, dated the Effective Date, substantially in the form of Exhibit G-1 with appropriate insertions, executed by any Responsible Officer of such Loan Party, and including or attaching the documents referred to in paragraph (d) of this Section.

(d) The Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) resolutions of the Board of Directors and/or similar governing bodies of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by its secretary, an assistant secretary or a Responsible Officer as being in full force and effect without modification or amendment, and (iv) a good standing certificate (to the extent such concept exists) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Agents shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on or prior to the Effective Date, including the fees of the Specified Lender Advisors, to the extent invoiced prior to the Effective Date (except as otherwise reasonably agreed by Borrower), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel including the fees of Gibson, Dunn & Crutcher LLP, ArentFox Schiff LLP, Bryan Cave Leighton Paisner LLP, Gowling WLG (Canada) Limited, Nassiry Law and Goodmans LLP) required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) Subject to Schedule 5.14, the Collateral and Guarantee Requirement shall have been satisfied.

(g) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received the Historical Financial Statements.

(h) The Administrative Agent shall have received a Borrowing Request to be made on the Effective Date meeting the requirements of Section 2.03.

(i) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received, prior to the Effective Date, all documentation and other information about the Loan Parties that shall have been reasonably requested in writing at least one day prior to the Effective Date and that the Administrative Agents or the Specified Lender Advisors on behalf of the Lenders have reasonably determined is required by United States regulatory authorities under applicable "know your customer" and anti- money laundering rules and regulations, including without limitation Title III of the USA Patriot Act.



(j) The Borrower shall have delivered to the Administrative Agent a certificate dated as of the Effective Date, to the effect set forth in Section 4.01(k), (o) and (p).

(k) The representations and warranties contained in Article III shall be true and correct in all material respects on and as of the Effective Date; provided that (A) in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (B) if any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, (1) the definition thereof shall be the definition of “Material Adverse Effect” for purposes of the making or deemed making of such representation and warranty on, or as of, the Effective Date (or any date prior thereto) and (2) such representation and warranty shall be true and correct in all respects.

(l) The Administrative Agent and Specified Lender Advisors on behalf of the Lenders shall have received the following documents in form and substance satisfactory to the Required Lenders, duly executed and dated the Effective Date:

- (i) the Escrow Agreement;
- (ii) the Forbearance Agreement; and
- (iii) the Approved Budget;

(m) (i) (a) The Bankruptcy Court shall have entered the Interim Order, no later than five (5) Business Days after the Petition Date, and such order shall be in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via a Direction of the Required Lenders) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent), be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (which consent may be communicated via a Direction of the Required Lenders) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) and (b) the Canadian Bankruptcy Court shall have entered the Canadian Interim Orders no later than [ \_ ] Business Days following the Petition Date, and such orders shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion, be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent); (ii) the Lenders shall have received drafts of the “first day” pleadings for the Chapter 11 Cases and all materials for the Canadian Recognition Proceeding, in each case, in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via a Direction of the Required Lenders), not later than a reasonable time in advance of the Petition Date for the Administrative Agent’s and Lenders’ counsel to review and analyze the same; (iii) all motions, orders (including the “first day” orders) and other documents to be filed with or submitted to the Bankruptcy Court on the Petition Date or the Canadian Bankruptcy Court on the CCAA Filing Date shall be in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via a Direction of the Required Lenders); and (iv) (a) all “first day” orders shall have been approved and entered by the Bankruptcy Court except as otherwise agreed by the Required Lenders (which agreement may be communicated via a Direction of the Required Lenders), and (b) the Canadian Interim Orders shall have been approved and entered by the Canadian Bankruptcy Court except as otherwise agreed by the Required Lenders.



(n) The Prepetition Existing Administrative Agent and the Required Lenders (as defined under the Prepetition Existing Credit Agreement) shall have each consented to the use of collateral or received adequate protection (if applicable) in respect of the liens securing their respective obligations pursuant to the Interim Order.

(o) After due inquiry, each Loan Party is unaware of any fraudulent activities in connection with its business.

(p) As of the Effective Date, no Event of Default or Default shall have occurred and be continuing.

(q) The RSA shall not have been terminated and shall be in full force and effect and no default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof.

SECTION 4.02 Conditions to Withdrawal of Escrow Term Loans from Loan Proceeds Account. The obligations of the Lenders to permit any Withdrawal after the Effective Date (each, a “Credit Event”) are subject to the satisfaction or waiver by the Required Lenders in their respective sole discretion and, with respect to any condition affecting the rights and duties of the Administrative Agent, the Administrative Agent, any which waiver by the Required Lenders and the satisfaction of the Required Lenders, of the following additional conditions precedent, as applicable, which may be communicated by a Direction of the Required Lenders:

(a) With respect to each Credit Event, the Administrative Agent shall have received a written Withdrawal Notice by no later than 3:00 p.m. New York City time on the Monday (of, if such Monday is not a Business Day, the first Business Day preceding such day) of the week for a proposed funding of such Credit Event on the Thursday (of, if such Thursday is not a Business Day, the first Business Day preceding such day) of such week;

(b) At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing (including with respect to compliance with the Approved Budget (subject to Permitted Variances) and the Milestones) and the Loan Parties shall be in compliance with the Minimum Liquidity Covenant;

(c) Without giving effect to the Credit Event and the use of proceeds thereof, the Borrower was in compliance with Section 5.21 as of the most recently ended testing period for which reports were delivered under Section 5.21;

(d) The RSA shall not have been terminated and shall be in full force and effect and no default or event of default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof;

(e) The minimum amount of such Credit Event shall not be less than the Borrowing Minimum and shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple;

(f) All representations the representations of the Loan Parties set forth in this Agreement shall, in each case, be true and correct in all material respects as of the Effective Date or the date of such Credit Event, as applicable (or true and correct in all material respects as of a specified date, if earlier) (except to the extent such representations and warranties are qualified by “materiality” or “Material Adverse Effect,” in which case such representations and warranties shall be true and correct in all respects);



(g) No motion, pleading or application seeking relief affecting the provision of the financing contemplated hereunder in a manner that is adverse to the Lenders, in their capacities as such, shall have been filed in the Bankruptcy Court by any Loan Party without the prior written consent of the Administrative Agent (at the Direction of the Required Lenders) or Escrow Agent (at the Direction of the Required Lenders);

(h) After due inquiry, each Loan Party is unaware of any fraudulent activities in connection with its business;

(i) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received the applicable Approved Budget; provided that, notwithstanding anything to the contrary each, in no event shall the conditions precedent for any Credit Event be deemed satisfied unless the Submitted Budget with respect to such Credit Event has been approved by and be in form and substance satisfactory to the Required Lenders.

(j) The Agents shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on such date, including the fees of the Specified Lender Advisors, to the extent invoiced prior to such Credit Event, as applicable (except as otherwise reasonably agreed by Borrower), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party under any Loan Document;

(k) The Final Order shall have been entered by the Bankruptcy Court, such order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

(l) The Collateral Agent, for the benefit of the Secured Parties, shall have valid and perfected Liens on all Collateral, to the extent contemplated hereby, and pursuant to the other Loan Documents, including the applicable DIP Order, the Canadian DIP Recognition Order and the Canadian Collateral Agreement.

(m) The Loan Parties shall be in compliance with the Interim Order, the Canadian DIP Recognition Order and the Final Order, as the case may be.

(n) The Loan Parties shall be in compliance in all material respects with each “first day” order and “second day” order then in effect.

(o) All “second day” orders approving on a final basis the relief granted under any “first day” orders shall have been entered by the Bankruptcy Court, shall be satisfactory to the Required Lenders in their sole discretion, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as acceptable to the Required Lenders in their sole discretion.

On any date on which the Loans shall have been accelerated, any amounts remaining in the Loan Proceeds Account, as the case may be, may be applied by the Administrative Agent (at the Direction of the Required Lenders) to reduce the Loans then outstanding, in accordance with Section 2.16. None of the Loan Parties shall have (and each Loan Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Loan Proceeds Account



upon the occurrence and during the continuance of any Default or Event of Default. It is understood and agreed that the Administrative Agent may not deliver a "Termination Notice" (as defined and under the Escrow Agreement) unless and until an Event of Default has occurred and is continuing.

Notwithstanding the foregoing, if the Required Lenders determine that the Borrower has failed to satisfy any of the conditions precedent set forth in Section 4.02 (with respect to any Credit Event) of this Agreement for a Withdrawal Notice and so advise the Administrative Agent in writing, the Administrative Agent shall decline to fund such Withdrawal Notice.

The acceptance by the Borrower of the Loans or proceeds of a Credit Event shall conclusively be deemed to constitute a representation by the Borrower that each of the conditions precedent set forth in this Section 4.01 and 4.02, as applicable, shall have been satisfied in accordance with its respective terms or shall have been irrevocably waived by the applicable relevant Person; *provided, however*, that the making of any such Credit Event (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by the Administrative Agent, any Lender or other Secured Party of the provisions of this Article IV on any future occasion or operate as a waiver of (i) the right of Administrative Agent and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent Credit Event, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of the Administrative Agent or any party as a result of any such failure of the Loan Parties to comply.

#### ARTICLE V AFFIRMATIVE COVENANTS

Until the Discharge of DIP Obligations has occurred, the principal of and interest on each Loan and all fees, expenses and other amounts (other than contingent amounts not yet due) payable under any Loan Document shall have been paid in full, each of Holdings and the Borrower covenants and agrees with the Lenders that:

SECTION 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) commencing with the fiscal year ending December 31, 2023, on or before the date on which such financial statements are required or permitted to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 120 days after the end of such fiscal year), audited consolidated balance sheet and audited consolidated statements of operations, comprehensive income (loss), stockholders' equity (or, to the extent such fiscal year ends prior to the Effective Date, parent net investment) and cash flows of the Borrower as of the end of and for such fiscal year, and related notes thereto, setting forth in each case, in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP, PricewaterhouseCoopers LLP or any other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than any exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, (A) an upcoming maturity date of any Indebtedness under this Agreement or Material Indebtedness occurring within one year from the time such opinion is delivered or (B) any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of the end of and for such year on a consolidated basis in accordance with GAAP consistently applied;



(b) commencing with the financial statements for the fiscal quarter ending March 31, 2023 on or before the date on which such financial statements are required or permitted to be filed with the SEC with respect to each of the first three fiscal quarters of each fiscal year of the Borrower (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 60 days after the end of each such fiscal quarter), unaudited consolidated balance sheet and unaudited consolidated statements of operations, comprehensive income (loss) and cash flows of the Borrower as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case, in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year (in each case, other than comparisons to financial statements in prior periods that were not required to be delivered hereunder), all certified by a Financial Officer as presenting fairly in all material respects the financial position and results of operations and cash flows of the Borrower and the Subsidiaries as of the end of and for such fiscal quarter and such portion of the fiscal year on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes and which may exclude the effects of purchase accounting with respect to the Transactions or any Permitted Investment or similar Investment permitted under this Agreement;

(c) within 30 days after the end of each month, commencing with the month ending May 31, 2023, the consolidated balance sheet of the Borrower as at the end of such month and the related consolidated statements of income of the Borrower for such month; and

(d) not later than five days after any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) [reserved] and (iii) in the case of financial statements delivered under paragraph (a) above, setting forth a reasonably detailed calculation of the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Subsidiary in respect of any event described in clause (a) of the definition of the term "Prepayment Event" and the portion of such Net Proceeds that has been used to prepay the Loans in accordance with Section 2.09(b);

(e) commencing with the fiscal year ending December 31, 2024, not later than 120 days after the commencement of each fiscal year of the Borrower, a detailed consolidated budget for the Borrower and its Subsidiaries for such fiscal year (including a projected consolidated balance sheet and consolidated statements of projected operations and cash flows as of the end of and for such fiscal year and setting forth the material assumptions used for purposes of preparing such budget) in the form customarily provided by management of the Borrower (or otherwise provided to the Investors);

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) filed by Holdings, the Borrower or any Subsidiary (or, if the Borrower is a subsidiary of the IPO Entity, the IPO Entity) with the SEC or with any national securities exchange; and

(g) reasonably promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent on its own behalf or on behalf of any Lender may reasonably request in writing.

(h) within 30 days after the end of each month, a report relating to such month (a "KPI Report") containing the key performance indicators set forth in the form of such report agreed with the Specified



Lender Advisors prior to the Effective Date and delivered with respect to May 31, 2023 pursuant to Section 4.01(l).

(i) at the request of the Specified Lender Advisors, a report containing a summary of accounts payable and aging;

(j) deliver to the Administrative Agent and the Specified Lender Advisors copies of all monthly reports, projections, or other written information with respect to each of the Loan Parties' business or financial condition or prospects (as well as all pleadings, motions, orders applications and judicial information) filed by or on behalf of the Borrower with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case or Canadian Recognition Proceeding) or the Committee, at the time such document is filed with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case or Canadian Recognition Proceeding) or the Committee, as applicable; provided, however, that such reports, projections, or other written information required to be delivered pursuant to this clause (j) shall be deemed delivered to the Administrative Agent and the Specified Lender Advisors for purposes of this Agreement when such reports, projections or other written information is filed with the Bankruptcy Court.

Notwithstanding the foregoing, the obligations in paragraphs (a), (b), (c) and (i) of this Section 5.01 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the Form 10-K or 10-Q (or the equivalent), as applicable, of the Borrower (or a parent company thereof) filed with the SEC or with a similar regulatory authority in a foreign jurisdiction or (B) the applicable financial statements of Holdings (or any Intermediate Parent or any direct or indirect parent of Holdings); *provided* that to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Borrower and its Subsidiaries on a stand-alone basis, on the other hand, and to the extent such information is in lieu of information required to be provided under paragraph (a) of this Section 5.01, such materials are accompanied by a report and opinion of KPMG LLP, PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than any exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, (A) an upcoming maturity date of any Indebtedness under this Agreement or Material Indebtedness occurring within one year from the time such opinion is delivered or (B) any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of the end of and for such year on a consolidated basis in accordance with GAAP consistently applied.

Documents required to be delivered pursuant to paragraphs (a), (b), (c), (f) or (i) (to the extent any such documents are included in materials otherwise filed with the SEC) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earlier of the date (A) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's website on the Internet or (B) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) the Borrower shall deliver such documents to the Administrative Agent upon its reasonable request until a written notice to cease delivering such documents is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the



posting of any such documents and upon its reasonable request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Company Materials”) by posting the Company Materials on IntraLinks or another similar electronic system (the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities.

The Borrower hereby agrees that it will, upon the Administrative Agent’s reasonable request, identify that portion of the Company Materials that may be distributed to the Public Lenders and that (i) all such Company Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (ii) by marking Company Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Company Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Holdings, the Borrower or their respective securities for purposes of United States federal and state securities laws (*provided, however*, that to the extent such Company Materials constitute Information, they shall be treated as set forth in Section 9.12); (iii) all Company Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (iv) the Administrative Agent shall be entitled to treat any Company Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

SECTION 5.02 Notices of Material Events. Promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof, Holdings or the Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of Holdings or the Borrower, affecting the Borrower or any of its Subsidiaries or the receipt of a written notice of an Environmental Liability or the occurrence of an ERISA Event or a Foreign Plan Event, in each case either, individually or when combined with other such events, could reasonably be expected to result in a Material Adverse Effect; and
- (c) the occurrence of any event that, individually or when combined with other such events, has resulted in or could reasonably be expected to result in a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Information Regarding Collateral.



(a) Holdings or the Borrower will furnish to the Administrative Agent promptly prior written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), or (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization.

(b) Not later than five days after delivery of financial statements pursuant to Section 5.01(a) (or such later date as agreed by the Administrative Agent (acting at the Direction of the Required Lenders)), Holdings or the Borrower shall deliver to the Administrative Agent a certificate executed by a Responsible Officer of Holdings or the Borrower (i) [reserved], (ii) identifying any wholly-owned Subsidiary that has become, or ceased to be, a Material Subsidiary during the most recently ended fiscal year and (iii) certifying that all notices required to be given prior to the date of such certificate by Section 5.03 or 5.11 have been given.

SECTION 5.04 Existence; Conduct of Business. Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, the patents, copyrights, trademarks, trade names and other Intellectual Property material to the conduct of its business, in each case (other than the preservation of the existence of Holdings and the Borrower) to the extent that the failure to do so could reasonably be expected to have a Material Adverse Effect, *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

SECTION 5.05 Payment of Taxes, etc. Subject to the U.S. Bankruptcy Code, the terms of the DIP Order and any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that would result in a violation of any applicable law, including the U.S. Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payment), Holdings and the Borrower will, and will cause each Restricted Subsidiary to, timely file any Tax returns and pay its obligations in respect of all Taxes before the same shall become delinquent or in default, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings or (ii) the failure to make payment could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 5.06 Maintenance of Properties. The Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.07 Insurance.

(a) The Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment of the management of the Borrower) are reasonable and prudent in light of the size and nature of its business; and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. Each such policy of insurance maintained by a Loan Party shall (i) name the Administrative Agent, on behalf of the Lenders, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance



policy, contain a loss payable/mortgagee clause or endorsement that names Administrative Agent, on behalf of the Lenders, as the loss payee/mortgagee thereunder.

(b) If any portion of the improvements on any Mortgaged Property subject to FEMA rules and regulations is at any time located in an area identified by FEMA (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto, the “Flood Insurance Laws”), then the Borrower shall, or shall cause the relevant Loan Party to, (i) maintain or cause to be maintained, flood insurance sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance, which evidence complies with applicable Flood Insurance Laws and rules and regulations promulgated pursuant thereto.

**SECTION 5.08 Books and Records; Inspection and Audit Rights.** The Borrower will, and will cause each Restricted Subsidiary to, maintain proper books of record and account in which entries that are full, true and correct in all material respects and are in conformity with GAAP (or applicable local standards) consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries, as the case may be. The Borrower will, and will cause the Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 5.08 and the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default, which visitation and inspection shall be at the reasonable expense of the Borrower; *provided further*, that (a) when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice and (b) the Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower’s independent public accountants.

**SECTION 5.09 Compliance with Laws.** Subject to the DIP Order, the Borrower will, and will cause each Restricted Subsidiary to, comply with its Organizational Documents and all Requirements of Law with respect to it or its property (including, including without limitation, ERISA, applicable Environmental Laws and any foreign law, rules, regulations and orders of any Governmental Authority that relates to or governs Foreign Pension Plans as well as the Patriot Act, the FCPA all other applicable anti-corruption laws and applicable Sanctions), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.10 Use of Proceeds.** The Borrower will use the proceeds of the Loans as set forth in Section 3.17.

**SECTION 5.11 Additional Subsidiaries.** If any additional direct or indirect Subsidiary of the Borrower is formed or acquired after the Effective Date and if such Subsidiary becomes a Debtor under the Chapter 11 Cases or any existing direct or indirect Subsidiary of the Borrower becomes a Debtor under the Chapter 11 Cases, within 5 Business Days after the date such Subsidiary becomes a Debtor under the Chapter 11 Cases, notify the Collateral Agent thereof and cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary. The Borrower shall and shall cause the Guarantors to take any and all actions reasonably requested by the Administrative Agent or Required Lenders that they deem



necessary or advisable to obtain or maintain a valid and perfected Lien with respect to the Collateral, all at the expense of the Loan Parties.

SECTION 5.12 Further Assurances.

(a) Each of Holdings and the Borrower will, and will cause each Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) If, after the Effective Date, any Material Real Property is acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Security Document that becomes subject to the Lien created by such Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will forthwith notify the Administrative Agent thereof, and, if requested by the Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent and consistent with the Collateral and Guarantee Requirement to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties and subject to last paragraph of the definition of the term "Collateral and Guarantee Requirement."

SECTION 5.13 Ratings. Each of Holdings and the Borrower will use best efforts to cause (a) the Borrower to continuously have a public corporate credit rating from each of S&P and Moody's within fifteen (15) days of the Effective Date (but not to maintain a specific rating) and (b) the credit facilities made available under this Agreement to be continuously rated by each of S&P and Moody's (but not to maintain a specific rating) within fifteen (15) days of the Effective Date.

SECTION 5.14 Certain Post-Closing Obligations. Each of Holdings, the Borrower and each other Loan Party agrees that it will deliver, or will cause to be delivered, to the Administrative Agent the items described on Schedule 5.14 and complete, or cause to be completed, the actions described on Schedule 5.14, in each case, by the times specified on such Schedule 5.14 with respect thereto, or such later time as the Administrative Agent may agree (acting at the Direction of the Required Lenders). All conditions precedent, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.14 within the time periods required by this Section 5.14, rather than as elsewhere provided in the Loan Documents).

SECTION 5.15 [Reserved].

SECTION 5.16 Change in Business. Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, reasonably related or ancillary to any of the foregoing.

SECTION 5.17 Changes in Fiscal Periods. The Borrower shall not make any change in its fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Required Lenders (which approval may be communicated by means of a Direction of the Required Lenders), in which case, the Borrower and



the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 5.18 Bi-Weekly Lender Calls. On a bi-weekly basis, on the Thursday of each applicable week beginning with June 8, 2023 (at 11:00 a.m. New York City time) (or such other day of any week or time agreed to as among the Required Lenders and the Borrower), management of the Borrower shall hold a telephonic meeting with the Lenders, the Administrative Agent and its counsel and the Specified Lender Advisors to update the Lenders on financing results, operations, various business and legal matters, including status updates on key existing clients and key targets and vendors and, if applicable, any ongoing sale process(es), and each such call such include a customary question and answer session for the Lenders.

SECTION 5.19 Control Agreements.

(a) No later than June [13], 2023 at 11:59 p.m. New York City time (as such deadline may be extended by the Administrative Agent (acting at the Direction of the Required Lenders)), the Borrower shall cause each Loan Party to enter into an Account Control Agreement, as applicable, and cause each of the Liens on deposit accounts and securities accounts owned by Loan Parties (other than Excluded Accounts) to be perfected by “control” as defined in the UCC.

(b) Upon the establishment of any deposit account or securities account (other than Excluded Accounts), the Borrower and the Loan Parties shall concurrently enter into an Account Control Agreement and cause each of the Liens on such deposit accounts and securities accounts to be perfected by “control” as defined in the UCC.

(c) The Borrower shall manage all cash and Permitted Investments that are not in United States bank accounts in accordance with the Approved Budget and consistent with past practices.

SECTION 5.20 Milestones.

Solely in the event the RSA is terminated or expires, the Borrower shall, or shall cause, the actions and events set forth in the RSA to occur by the times and dates set forth therein as of the date the RSA is terminated or expires, as such actions and events may be waived, amended or modified at the Direction of the Required Lenders (each, a “Milestone” and collectively, the “Milestones”).

SECTION 5.21 Approved Budget.

(a) The use of Loans by the Loan Parties under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget (subject to Permitted Variances). The Approved Budget shall set forth, on a weekly basis, for the 13-week period covered thereby, the Budgeted Cash Receipts, Budgeted Disbursement Amounts, Budgeted Liquidity and Budgeted Borrower Professional Fees for the 13-week period commencing with the week that includes the Effective Date and shall be approved by, and be in form and substance satisfactory to, the Required Lenders (it being acknowledged and agreed that the form of Approved Budget set forth as Exhibit S hereto is approved by and satisfactory to such Lenders and is and shall be the Approved Budget (subject to the following proviso) unless and until replaced in accordance with terms of this Section 5.21); *provided*, that, notwithstanding anything to the contrary, the Borrower shall provide an updated budget in form and substance acceptable to the Required Lenders two Business Days prior to any Withdrawal from the Loan Proceeds Account (such budget, the “Submitted Budget”), and, to the extent such Submitted Budget is approved by the Required Lenders, such updated budget shall be the Approved Budget unless and until replaced in accordance with the terms of this Section 5.21. The Approved Budget shall include a 13-week cash flow forecast, which shall (i) include line-item reporting, the nature and scope of which shall be satisfactory to the Required Lenders, (ii)



otherwise be in form and substance satisfactory to, and subject to the approval of, the Required Lenders (or, with respect to the initial Approved Budget, all Lenders as of the Effective Date) (it being acknowledged and agreed that the form of the 13-week cash flow forecast provided by the Borrower to the Lenders prior to the Effective Date shall be deemed satisfactory), and (iii) update the 13-week cash flow forecast from the prior Approved Budget to add additional weeks to the forecast in order to present a 13-week forecast period.

(b) The Approved Budget shall be updated, modified or supplemented by the Borrower from time to time, including (i) on June [6], 2023 and (ii) at the end of each four (4) consecutive week period commencing on June [9], 2023, and in the event that such updated, modified or supplemented budget is not in form and substance satisfactory to the Required Lenders in their sole discretion, no such updated, modified or supplemented budget shall be effective if Required Lenders object in writing (which objection may be communicated by means of a Direction of the Required Lenders) within five days (or, in connection with a Withdrawal, two days) of receipt and if no written objection is received within five days (or, in connection with a Withdrawal, two days) of receipt, the updated, modified or supplemented budget shall be deemed an Approved Budget; *provided*, however, that in the event the Required Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall constitute an immediate Event of Default once the period covered by the prior Approved Budget has terminated (and at all times thereafter the then current Approved Budget shall remain in effect unless and until a new Approved Budget is not objected to by the Required Lenders (which objection may be communicated by means of a Direction of the Required Lenders)). Each Approved Budget delivered to the Administrative Agent and the Specified Lender Advisors shall be accompanied by such supporting documentation as reasonably requested by the Required Lenders. Each Approved Budget shall be prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time of preparation thereof. All Approved Budgets will be made available to lenders on the public side data site.

(c) Commencing with the First Testing Period and for each Variance Testing Period thereafter, the Borrower shall not permit: (x) the Actual Cash Receipts to be less than Budgeted Cash Receipts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period; (y) Actual Disbursement Amounts (excluding Actual Borrower Professional Fees, vendor-related motions and capital expenditures) to exceed the Budgeted Disbursement Amounts (excluding Budgeted Borrower Professional Fees, budgeted vendor-related motions and budgeted capital expenditures) (each calculated on a cumulative basis as opposed to a line by line basis), in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period and (z) and (y) actual amounts disbursed for capital expenditures to exceed the budgeted amounts for capital expenditures, in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period (the "Permitted Variances").

(d) On a bi-weekly basis, the Borrower shall deliver to the Administrative Agent and the Lenders on or before 5:00 p.m. New York City time on the Thursday of each applicable week commencing on June 22, 2023, a certificate which shall include such detail as is reasonably satisfactory to the Required Lenders, signed by a Responsible Officer of the Borrower (1) certifying that (i) the Loan Parties are in compliance with the covenants contained in Section 5.21(c) and (ii) no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (2) attaching an Approved Budget Variance Report, which shall be prepared by the Borrower as of the last day of the respective Variance Testing Period then most recently ended. Any such certificate will be made available to Lenders on the public side data site.



(e) The Lenders (i) may assume that the Loan Parties will comply with the Approved Budget (subject to Permitted Variances), (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Loan Document or other lending limits set forth therein.

SECTION 5.22 Specified Lender Advisors; Professional Services Firm. The Lenders shall be entitled to retain or continue to retain (either directly or through counsel) any Specified Lender Advisor as the Required Lenders may deem necessary to provide advice, analysis and reporting for the benefit of the Lenders. The Loan Parties shall pay all reasonable fees, charges and disbursements of each Specified Lender Advisor and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall use commercially reasonable efforts to cooperate with the Specified Lender Advisors in connection with the services the Specified Lender Advisors provide to the Lenders, including to promptly furnish to the Specified Lender Advisors the ordinary course monthly financial materials provided to the Board of Directors of Holdings or the Borrower (excluding, for the avoidance of doubt, any such materials that would adversely affect any legal privilege or that relate to the Lenders, the Loan Documents or other material debt financing arrangements; *provided* that the Borrower will use reasonable efforts to deliver such information in a manner that would not adversely affect such legal privilege) (it being understood that none of the foregoing shall be construed to override any existing confidentiality and/or other obligations owed by the Loan Parties to such of its advisors or any other Person, including with respect to the sharing of any such information with third parties).

The Lenders shall be entitled to retain or continue to retain (either directly or through counsel) a professional services firm that is acceptable to the Required Lenders (which may be communicated by a Direction of the Required Lenders) to help analyze and negotiate the Loan Parties' lease portfolio (such firm, the "PSF"). The Loan Parties shall pay all reasonable fees, charges and disbursements of PSF and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall use commercially reasonable efforts to cooperate with the PSF in connection with the services the PSF provides to the Lenders (it being understood that none of the foregoing shall be construed to override any existing confidentiality and/or other obligations owed by the Loan Parties to such of its advisors or any other Person, including with respect to the sharing of any such information with third parties).

SECTION 5.23 Chief Restructuring Officer. The Borrower shall maintain a Chief Restructuring Officer (a "CRO") acceptable to the Required Lenders (which may be communicated by a Direction of the Required Lenders), at the Borrower's sole cost and expense; *provided* that, for the avoidance of doubt, the Required Lenders hereby consent to the appointment of Eric Koza as the CRO. The terms, including the scope of the CRO's engagement shall be reasonably acceptable to the Direction of the Required Lenders (which may be communicated by a Direction of the Required Lenders). The Borrower shall have such CRO engaged at all times while any of the Obligations are outstanding.

SECTION 5.24 Cash Management. Maintain the cash management of the Loan Parties in accordance in all material respects with the Cash Management Order.

SECTION 5.25 Debtor-in-Possession Obligations. Comply in all material respects in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the



DIP Order, and any other order of the Bankruptcy Court or the Canadian Bankruptcy Court. Give, on a timely basis as specified in the applicable DIP Order, all notices required to be given to all parties specified in such DIP Order.

SECTION 5.26 Additional Bankruptcy Matters. Promptly provide the Administrative Agent, the Lenders and the Specified Lender Advisors with updates of any material developments in connection with the Loan Parties' reorganization efforts under the Chapter 11 Cases or the Canadian Bankruptcy Court, whether in connection with the sale of all or substantially all of the Borrower's and its Subsidiaries' consolidated assets, the marketing of any Loan Parties' assets, the formulation of bidding procedures, an auction plan, and documents related thereto, or otherwise.

SECTION 5.27 Deed of Hypothec. No later than June [9], 2023 at 11:59 p.m. New York City time (as such deadline may be extended by the Administrative Agent (acting at the Direction of the Required Lenders)), the Borrower shall cause Cyxtera Communications Canada, ULC to enter into the Deed of Hypothec, and shall provide to the Administrative Agent evidence that such Deed of Hypothec has been registered with the Register of Personal and Moveable Real Rights (Québec).

## ARTICLE VI NEGATIVE COVENANTS

Until the Discharge of DIP Obligations has occurred, each of Holdings and the Borrower covenants and agrees with the Lenders that:

### SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary or Intermediate Parent to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries under the Loan Documents;

(ii) Indebtedness outstanding on the Petition Date in respect of the Prepetition Existing Credit Agreement in an aggregate principal amount of \$[ ] or listed on Schedule 6.01 as long as such Indebtedness is subordinated in right of payment pursuant to the Forbearance Agreement;

(iii) Guarantees by Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries in respect of Indebtedness of the Borrower or any Restricted Subsidiary otherwise permitted hereunder; *provided* that (A) such Guarantee is otherwise permitted by Section 6.04, (B) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations pursuant to the Guarantee Agreement, (C) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness, (D) no Subsidiary that is not a Loan Party may guarantee Indebtedness of a Loan Party pursuant to this clause (iii), and (E) no Loan Party may guarantee any Indebtedness of a Subsidiary that is not a Loan Party pursuant to this clause (iii);

(iv) Indebtedness of Holdings, any Intermediate Parent, the Borrower or of any Restricted Subsidiary owing to any other Restricted Subsidiary, the Borrower, Holdings or any Intermediate Parent to the extent permitted by Section 6.04; *provided* that all such Indebtedness



of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations on terms (A) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit H or (B) otherwise reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders);

(v) (A) Indebtedness (including Capital Lease Obligations) of the Borrower or any of the Restricted Subsidiaries financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; *provided* that such Indebtedness is incurred concurrently with or within 180 days after the applicable acquisition, construction, repair, replacement or improvement, and (B) [reserved]; *provided further*, that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (v) shall not exceed \$2,500,000;

(vi) Indebtedness in respect of (A) Swap Agreements entered into to hedge or mitigate risks to which Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary has actual exposure (other than those in respect of shares of capital stock or other Equity Interests of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary) and (B) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary, in each case, that is not entered into for speculative purposes;

(vii) [reserved];

(viii) Indebtedness in respect of the Permitted Receivables Financing;

(ix) Indebtedness representing deferred compensation to employees of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(x) Indebtedness consisting of unsecured promissory notes issued by any Loan Party to current or former officers, directors and employees or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests in Holdings (or any direct or indirect parent thereof) permitted by Section 6.08(a);

(xi) [reserved];

(xii) [reserved];

(xiii) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements and Indebtedness arising from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xiv) Indebtedness of the Borrower and the Restricted Subsidiaries (which, for the avoidance of doubt, may be secured solely to the extent permitted by the provisions of Section 6.02); *provided* that at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xiv) shall not exceed \$2,500,000; *provided further*, that the aggregate principal amount of



Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance on this clause (xiv) shall not exceed, at the time of incurrence thereof, \$1,000,000;

(xv) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xvi) (A) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created, or related to obligations or liabilities incurred, in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims and (B) Indebtedness of the Borrower or any of the Restricted Subsidiaries as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers or trade creditors issued in the ordinary course of business; *provided* that the aggregate principal amount of Indebtedness outstanding in reliance on this sub-clause (B) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, \$1,000,000;

(xvii) obligations in respect of performance, bid, appeal and surety bonds and performance, bankers' acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practice;

(xviii) [reserved];

(xix) [reserved];

(xx) [reserved];

(xxi) [reserved];

(xxii) [reserved];

(xxiii) [reserved];

(xxiv) [reserved];

(xxv) [reserved];

(xxvi) [reserved];

(xxvii) [reserved];

(xxviii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxvii) above.



(b) Holdings and each Intermediate Parent will not create, incur, assume or permit to exist any Indebtedness except Indebtedness created under subsections (i), (iii), (iv), (vi), (ix), (x), (xi), (xii), and (xiii) of this Section 6.01(a) and all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in the foregoing clauses.

(c) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, issue any preferred Equity Interests or any Disqualified Equity Interests, except in the case of Holdings, preferred Equity Interests that are Qualified Equity Interests.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (i) through (xxvii) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; *provided* that, notwithstanding anything to the contrary, Indebtedness incurred under the Prepetition Existing Credit Agreement shall be incurred pursuant to Section 6.01(a)(ii) and may not be reclassified or divided.

SECTION 6.02 Liens. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(i) any Lien created under the Loan Documents (as defined under the Prepetition Existing Credit Agreement), including Liens created under the Security Documents (as defined under the Prepetition Existing Credit Agreement) existing as of the Effective Date;

(ii) Permitted Encumbrances;

(iii) (A) Liens existing on Effective Date; *provided* that any Lien securing Indebtedness or other obligations shall only be permitted if set forth on Schedule 6.02 and any modifications, replacements, renewals or extensions thereof; *provided* that (1) such modified, replacement, renewal or extension Lien does not extend to any additional property other than (a) after-acquired property that is affixed or incorporated into the property covered by such Lien and (b) proceeds and products thereof, and (2) the obligations secured or benefited by such modified, replacement, renewal or extension Lien are permitted by Section 6.01;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); *provided* that (A) such Liens attach concurrently with or within 180 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, except for accessions to such property and the proceeds thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof, and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; *provided further*, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;

(v) leases, non-exclusive licenses, subleases, sublicenses or easement interests granted to others that do not (A) interfere in any material respect with the business of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, taken as a whole or (B) secure any Indebtedness;



(vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (B) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking industry;

(viii) Liens (A) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.04 to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition) or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) any Lien securing the Obligations pursuant to the DIP Order and/or any Liens permitted under the Cash Management Order;

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Loan Party, Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Restricted Subsidiary that is not a Loan Party and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) any Liens pursuant to the Receivables Order;

(xii) any interest or title of a lessor under leases (other than leases constituting Capital Lease Obligations), entered into by any of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by any of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term "Permitted Investments";

(xv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xvi) Liens that are contractual rights of setoff (A) relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness, (B) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries or (C) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;



(xvii) ground leases in the ordinary course of business in respect of real property on which facilities owned or leased by Borrower or any of its Restricted Subsidiaries are located;

(xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) Adequate Protection Liens;

(xx) other Liens; *provided* that at the time of incurrence of the obligations secured thereby (after giving Pro Forma Effect to any such obligations) the aggregate outstanding face amount of obligations secured by Liens existing in reliance on this clause (xx) shall not exceed \$2,500,000 and, if such Liens are secured by Collateral, such Liens shall be (i) junior in priority to the Liens securing the Obligations (except, in each case, to the extent such Liens (x) secure Capital Lease or purchase money Indebtedness and extend only to assets acquired with the proceeds of such Indebtedness and proceeds and products thereof, replacements, accession or additions thereto and improvements thereon or (y) are senior to the Liens securing the Secured Obligations by operation of law);

(xxi) [reserved];

(xxii) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxiii) Liens on cash or Permitted Investments securing Swap Agreements not entered into for speculative purposes in the ordinary course of business submitted for clearing in accordance with applicable Requirements of Law; and

(xxiv) Liens on deposits taken by a Restricted Subsidiary that constitutes a regulated bank incurred in connection with the taking of such deposits.

For purposes of determining compliance with this Section 6.02, in the event that any Lien meets the criteria of more than one of the categories of Liens described in clauses (i) through (xxii) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such Lien (or any portion thereof) and will only be required to include the amount and type of such Lien in one or more of the above clauses; *provided* that, notwithstanding anything to the contrary, Liens securing the Prepetition Existing Credit Agreement shall be incurred pursuant to Section 6.02(i) and may not be reclassified or divided.

#### SECTION 6.03 Fundamental Changes.

(a) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that:

(i) any Restricted Subsidiary may merge with (A) the Borrower; *provided* that the Borrower shall be the continuing or surviving Person or (B) one or more other Restricted Subsidiaries; *provided* that when any Subsidiary Loan Party is merging or amalgamating with another Restricted Subsidiary either (1) the continuing or surviving Person shall be a Subsidiary Loan Party or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is permitted under Section 6.04;



(ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment must be an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for Fair Market Value and any promissory note or other non-cash consideration received in respect thereof is an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04;

(iv) the Borrower may merge, amalgamate or consolidate with any other Person; *provided* that the Borrower shall be the continuing or surviving Person;

(v) Holdings or any Intermediate Parent may merge, amalgamate or consolidate with any other Person (other than the Borrower), so long as no Event of Default exists after giving effect to such merger, amalgamation or consolidation; *provided* that (A) Holdings or Intermediate Parent, as applicable, shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not Holdings or Intermediate Parent, as applicable, or is a Person into which Holdings or Intermediate Parent, as applicable, has been liquidated (any such Person, the “Successor Holdings”), (1) the Successor Holdings shall expressly assume all the obligations of Holdings or Intermediate Parent, as applicable, under this Agreement and the other Loan Documents to which Holdings or Intermediate Parent, as applicable, is a party pursuant to a supplement hereto or thereto in form and substance reasonably satisfactory to the Administrative Agent, (2) each Loan Party other than Holdings or Intermediate Parent, as applicable, unless it is the other party to such merger, amalgamation or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Holdings’ obligations under this Agreement, (3) the Successor Holdings shall, immediately following such merger, amalgamation or consolidation, directly or indirectly own all Subsidiaries owned by Holdings or Intermediate Parent, as applicable, immediately prior to such transaction, (4) Holdings or Intermediate Parent, as applicable, shall have delivered to the Administrative Agent a certificate of a Responsible Officer and an opinion of counsel, each stating that such merger or consolidation complies with this Agreement and (5) [reserved]; *provided further*, that if the foregoing requirements are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings or Intermediate Parent, as applicable, under this Agreement and the other Loan Documents; *provided further*, that the Borrower agree to provide any documentation and other information about the Successor Holdings as shall have been reasonably requested in writing by any the Lender through the Administrative Agent that such Lender shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including Title III of the USA Patriot Act;

(vi) any Restricted Subsidiary may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12



(vii) any Restricted Subsidiary may effect a merger, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05; and

(viii) [reserved].

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made;

(b) loans or advances to officers, directors and employees of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, in each case, in accordance with the Approved Budget, (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests in Holdings (or any direct or indirect parent thereof) (*provided* that the amount of such loans and advances made in cash to such Person shall be contributed to the Borrower in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii); *provided* that at the time of incurrence thereof and after giving Pro Forma Effect thereto the aggregate principal amount outstanding in reliance on clause (i) and clause (iii) above shall not to exceed \$1,000,000 in the aggregate at any time outstanding;

(c) Investments by Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary in any of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary; *provided* that, in the case of any Investment by a Loan Party in a Restricted Subsidiary that is not a Loan Party, no Event of Default shall have occurred and be continuing or would result therefrom and shall not in the aggregate at any time outstanding exceed \$2,500,000 and shall be made solely using cash or Permitted Investments in the ordinary course of business consistent with past practice;

(d) Investments consisting of prepayments to suppliers in the ordinary course of business;

(e) Investments consisting of extensions of trade credit in the ordinary course of business;

(f) Investments (i) existing on the date hereof and set forth on Schedule 6.04(f) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) Investments existing on the date hereof by Holdings, the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; *provided* that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04(f) or as otherwise permitted by this Section 6.04;

(g) Investments in Swap Agreements not entered into for speculative purposes permitted under Section 6.01;

(h) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;

(i) [reserved];

(j) [reserved];



(k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, from financially troubled account debtors or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) loans and advances by Holdings, the Borrower or any Restricted Subsidiary to any direct or indirect parent of Holdings in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made by Holdings to such parent in accordance with Section 6.08(a); *provided* that, any such loans and advances will be deemed to reduce the relevant available capacity under the applicable sub-section of Section 6.08(a);

(n) [reserved];

(o) other Investments; *provided* that at the time any such Investment is made, the aggregate outstanding amount of all Investments made in reliance on this clause (o) together with the aggregate amount of all consideration paid in connection with all other Investments made in reliance on this clause (n) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other acquisition), shall not exceed \$2,500,000; *provided further* that this clause (o) may not be used for Investments in Subsidiaries of Holdings that are not Loan Parties;

(p) [reserved];

(q) advances of payroll payments to employees in the ordinary course of business;

(r) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests of Holdings (or any direct or indirect parent thereof or the IPO Entity) in each case, to the extent not resulting in a Change of Control; *provided* that (i) [reserved] and (ii) any amounts used for such an Investment or other acquisition that are not Qualified Equity Interests of Holdings (or any direct or indirect parent thereof or the IPO Entity) shall otherwise be permitted pursuant to this Section 6.04;

(s) [reserved]

(t) [reserved];

(u) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions, Restricted Payments and Restricted Debt Payments permitted (other than by reference to this Section 6.04) under Sections 6.02, 6.01, 6.03, 6.05, 6.08(a) and 6.08(b), respectively;

(v) [reserved];

(w) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower;



(x) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case, in the ordinary course of business;

(y) [reserved]; and

(z) Investments in Subsidiaries in the form of receivables and related assets required in connection with a Permitted Receivables Financing (including the contribution or lending of cash and cash equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or other Restricted Subsidiaries or to otherwise fund required reserves).

For purposes of determining compliance with this Section 6.04, with respect to any Investment initially made in reliance on a dollar-based criteria described in clauses (a) through (y) above in any Person that is not a Restricted Subsidiary at the time of, or after giving effect to, the making of such Investment, the Borrower may, in its sole discretion, reclassify such Investment (or any portion thereof) to clause (i) of this Section 6.04 upon such Person becoming a Restricted Subsidiary.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, Holdings, the Borrower, and each Subsidiary and any Intermediate Parent will comply with the Material Intellectual Property Provision.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, for purposes of this Section 6.04, the Foreign Guarantors will be deemed to be Subsidiaries of the Borrower that are not Loan Parties.

**SECTION 6.05 Asset Sales.** (a) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent, to, (i) sell, transfer, lease, license or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors' qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing Equity Interests to Holdings, the Borrower or a Restricted Subsidiary in compliance with Section 6.04(c)) (each, a "Disposition"), except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property that is no longer used or useful, or economically practicable to maintain, in the conduct of the business of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned);

(b) Dispositions of inventory and other assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(d) Dispositions of property to the Borrower or a Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for Fair Market Value and any promissory



note or other non-cash consideration received in respect thereof is an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04;

(e) Dispositions permitted by Section 6.03, Investments permitted by Section 6.04 (other than Section 6.04(u)), Restricted Payments permitted by Section 6.08(a), Restricted Debt Payments permitted by Section 6.08(b) and Liens permitted by Section 6.02, in each case, other than by reference to this Section 6.05;

(f) [reserved];

(g) Dispositions of Permitted Investments in the ordinary course of business;

(h) Dispositions of (A) accounts receivable in the ordinary course of business in connection with the collection or compromise thereof (excluding sales to factors or other third parties) and (B) accounts receivables and related assets pursuant to any Permitted Receivables Financing;

(i) leases, subleases, non-exclusive licenses or sublicenses, in each case, in the ordinary course of business and that, individually or in the aggregate, do not materially interfere with the business of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries;

(j) Dispositions of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event;

(k) Dispositions of property to Persons other than Holdings, the Borrower or any of the Restricted Subsidiaries (including the sale or issuance of Equity Interests in a Restricted Subsidiary) not otherwise permitted under this Section 6.05 in an aggregate principal amount not to exceed \$5,000,000 during the term of this Agreement; *provided* that (i) such Disposition is made for Fair Market Value and (ii) the Borrower or a Restricted Subsidiary shall receive not less than 90% of such consideration in the form of cash or Permitted Investments;

(l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) [reserved];

(n) transfers of condemned property as a result of the exercise of “*eminent domain*” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(o) [reserved]; and

(p) [reserved].

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, Holdings, the Borrower, and each Subsidiary and any Intermediate Parent will comply with the Material Intellectual Property Provision.



Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, for purposes of this Section 6.05, the Foreign Guarantors will be deemed to be Subsidiaries of the Borrower that are not Loan Parties.

**SECTION 6.06** Holdings Covenant. Holdings and any Intermediate Parent will not conduct, transact or otherwise engage in any business or operations, or own any Equity Interests of any Person, other than (i) the ownership and/or acquisition of the Equity Interests of the Borrower and any Intermediate Parent, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and/or the Borrower, (iv) the performance of its obligations under and in connection with the Loan Documents, any documentation governing any Indebtedness or Guarantee permitted to be incurred or made by it under Article VI, the Transactions and the other agreements contemplated hereby and thereby, (v) any public offering of its common stock or any other issuance or registration of its (or its direct or indirect parent's) Equity Interests for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, including the formation of one or more "shell" companies to facilitate any such offering or issuance, (vi) any transaction that Holdings or any Intermediate Parent is permitted to enter into or consummate under Article VI (including, but not limited to, the making of any Restricted Payment permitted by Section 6.08 or holding of any cash or Permitted Investments received in connection with Restricted Payments made in accordance with Section 6.08 pending application thereof in the manner contemplated by Section 6.04, the incurrence or payment of any Indebtedness permitted to be incurred by it under Section 6.01 or not prohibited to be paid by it under Section 6.08(b) and, subject to the limitations set forth in the preceding clause (i), the making of any Investment in any Intermediate Parent, the Borrower or any of its Subsidiaries permitted to be made by it under Section 6.04), (vii) incurring reasonable and customary documented fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (viii) providing indemnification as permitted in Section 6.09, (ix) activities incidental to the consummation of the Transactions and (x) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

**SECTION 6.07** Negative Pledge. Holdings and the Borrower will not, and will not permit any Restricted Subsidiary or Intermediate Parent to enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; *provided* that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (i) Requirements of Law, (ii) any Loan Document, (iii) any documentation governing any Permitted Receivables Financing entered into in the ordinary course, (iv) any documentation governing the Prepetition Existing Credit Agreement, (v) [reserved], (vi) [reserved], (vii) [reserved], (viii) [reserved] and (ix) [reserved]; *provided* that with respect to Indebtedness referenced above, such restrictions shall be no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and such restrictions shall not expand the scope in any material respect of any such restriction or condition contained in the Indebtedness being refinanced;

(b) customary restrictions and conditions existing on the Effective Date set forth on Schedule 6.07 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;



(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; *provided* that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses and other contracts restricting the assignment thereof;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing by such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); *provided* that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any Restricted Subsidiary;

(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) [reserved];

(j) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted by Section 6.02 and applicable solely to such joint venture and entered into in the ordinary course of business; and

(k) customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

#### SECTION 6.08 Restricted Payments; Certain Payments of Indebtedness.

(a) Neither Holdings nor the Borrower will, nor will they permit any Intermediate Parent or Restricted Subsidiary to pay or make, directly or indirectly, any Restricted Payment, except:

(i) (A) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other wholly-owned Subsidiary of the Borrower that is a Loan Party and (B) each Restricted Subsidiary that is not a Loan Party may make Restricted Payments to any other wholly-owned Restricted Subsidiary that is not a Loan Party in the ordinary course of business and consistent with past practice;

(ii) [reserved];



(iii) Holdings may declare and make dividend payments or other distributions payable solely in the Equity Interests of Holdings;

(iv) [reserved];

(v) repurchases of Equity Interests in Holdings (or Restricted Payments by Holdings to allow repurchases of Equity Interest in any direct or indirect parent of Holdings) deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such stock options or warrants;

(vi) Restricted Payments made by Holdings to redeem, acquire, retire or repurchase its Equity Interests (or any options, warrants, restricted stock units or stock appreciation rights issued with respect to any of such Equity Interests) (or make Restricted Payments to allow any of Holdings' direct or indirect parent companies to so redeem, retire, acquire or repurchase their Equity Interests) held by future, current or former officers, managers, consultants, directors and employees (or their respective affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees) of Holdings (or any direct or indirect parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement; *provided* that the aggregate amount of Restricted Payments permitted by this clause (vi) after the Effective Date, together with the aggregate amount of loans and advances by Holdings, the Borrower or any Restricted Subsidiary to any parent of Holdings made pursuant to Section 6.04(m) in lieu thereof, shall not exceed \$1,000,000 in the aggregate during the term of this Agreement;

(vii) Holdings may make Restricted Payments in cash:

(A) to allow any direct or indirect parent of Holdings to pay, for any taxable period for which Holdings and/or any of its Subsidiaries are members of a consolidated, combined or unitary tax group for U.S. federal and/or applicable state, local or foreign income Tax (or any similar Tax imposed in lieu of an income tax) for the purposes of which a direct or indirect parent of Holdings is the common parent or applicable taxpayer (a "Tax Group"), the portion of any U.S. federal, state, local or foreign Taxes (as applicable) of such Tax Group for such taxable period that is attributable to Holdings and/or its Subsidiaries or such parent's or applicable taxpayer's ownership of Holdings and/or its Subsidiaries (net of any payments already made by Holdings and its Subsidiaries); *provided* that Restricted Payments made pursuant to this clause (a)(vii)(A) shall not exceed the Tax liability that Holdings and/or its Subsidiaries (as applicable) would have incurred were such Taxes determined as if such entity(ies) were a standalone taxpayer or a stand-alone group;

(B) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including travel, administrative, legal, accounting, audit and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership of Holdings and its Subsidiaries, (2) any reasonable and customary indemnification claims made by directors or officers of any direct or indirect parent of Holdings attributable to the ownership or operations of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, (3) fees and expenses (x) due



and payable by any of the Borrower and the Restricted Subsidiaries and (y) otherwise permitted to be paid by the Borrower and the Restricted Subsidiaries under this Agreement, (4) payments that would otherwise be permitted to be paid directly by the Borrower or the Restricted Subsidiaries pursuant to Section 6.09(iii) or (5) subject to there being no continuing Event of Default, (I) payments that would otherwise be permitted to be paid directly by Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries pursuant to Section 6.09(x) or (II) to the extent permitted by Section 6.09, other customary advisory, refinancing, subsequent transaction and exit fees and franchise, registration or similar Taxes payable by any direct or indirect parent of Holdings that are attributable to the ownership of Holdings and its Subsidiaries, in each case, in accordance with the Approved Budget;

(C) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate existence;

(D) [reserved];

(E) the proceeds of which shall be used by any direct or indirect parent of Holdings to make payments of the type permitted by Section 6.08(a)(vi);

(F) [reserved];

(G) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries, in each case, in accordance with the Approved Budget; and

(H) [reserved];

(viii) [reserved];

(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; *provided* that such new Equity Interests contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(x) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options and the vesting of restricted stock and restricted stock units;

(xi) Holdings may (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;

(xii) [reserved;]



(xiii) payments made or expected to be made by Holdings (or any parent thereof) in respect of withholding or similar taxes payable upon exercise of Equity Interests of Holdings (or such parent) by any future, present or former employee, director, officer, manager or consultant of Holdings, any Intermediate Parent, the Borrower or any of its Restricted Subsidiaries (or their respective controlled Affiliates or Immediate Family Members) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests of Holdings (or such parent) represent a portion of the exercise price of such options or warrants or required withholding or similar taxes;

(xiv) [reserved]; and

(xv) [reserved];

(b) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary to make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other assets or property) of or in respect of principal of or interest on any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Junior Financing (the foregoing, "Restricted Debt Payments"), except:

(i) payment of regularly scheduled interest and principal payments (including any required AHYDO catch-up payment) as, in the form of payment and when due in respect of any Indebtedness, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

(ii) refinancings of Indebtedness with proceeds of a Junior Financing, or, other than in the case of Indebtedness subordinated in right of payment to the Loan Documents, unsecured Indebtedness, in each case, permitted to be incurred under Section 6.01;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parent companies or any Intermediate Parent;

(iv) [reserved]; and

(v) [reserved].

(c) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, amend or modify any documentation governing any Junior Financing, in each case

(i) if the effect of such amendment or modification (when taken as a whole):

(A) is materially adverse to the Lenders in their capacity as such;

(B) more disadvantageous to the Lenders than the relevant transaction in existence on the Effective Date;

(C) increases the amount of cash pay interest with respect thereto (including (x) pursuant to increases in the interest rate, increases to applicable floors, or increases to credit spread adjustments, (y) through payment of cash fees or (z) through modification of any tests



required to be satisfied in order to require the payment of cash interest); *provided* that, for the avoidance of doubt, this clause (iii) shall not apply with regard to any payment-in-kind interest;

(D) causes such indebtedness to mature earlier than (or have a Weighted Average Life to Maturity earlier than) the Loans;

(E) adds, increases the amount, or increases the frequency of any amortization schedule or mandatory prepayments;

(F) adds any covenant, condition, default, event of default, or any other term that is materially adverse to the Borrower relative to such terms as of the Effective Date (including any restrictions on paying the Loans or otherwise performing its obligations under this Agreement); or

(G) adds any guarantor or collateral that is not a Guarantor or Collateral, as applicable, under the Loan Documents.

(ii) in violation of the Forbearance Agreement or any intercreditor agreement related to such debt entered into with the Administrative Agent and/or changes the subordination terms set forth in the definitive documentation governing any Junior Financing.

SECTION 6.09 Transactions with Affiliates. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(i) transactions with Holdings, the Borrower, any Intermediate Parent or any Restricted Subsidiary in the ordinary course of business;

(ii) on terms substantially as favorable to Holdings, the Borrower, such Intermediate Parent or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate;

(iii) [reserved];

(iv) issuances of Equity Interests of Holdings, any Intermediate Parent or the Borrower to the extent otherwise permitted by this Agreement;

(v) employment and severance arrangements between Holdings, the Borrower, any Intermediate Parent and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Sections 6.04(b) and 6.04(p));

(vi) reasonable payments by Holdings (and any direct or indirect parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings (and any such parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of any Intermediate Parent, the Borrower and the Restricted Subsidiaries, to the extent payments are permitted by Section 6.08;



(vii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of Holdings (or any direct or indirect parent company thereof), the Borrower, any Intermediate Parent and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries;

(viii) transactions pursuant to permitted agreements in existence the Effective Date and set forth on Schedule 6.09;

(ix) Restricted Payments and Restricted Debt Payments permitted under Section 6.08 (other than Section 6.08(a)(vii)(B)(4) or (5));

(x) [reserved]; and

(xi) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any Affiliate of any of the foregoing) of the Borrower, any of the Subsidiaries or any direct or indirect parent thereof.

Notwithstanding anything herein to the contrary, in no event shall any material transfer or transfers be made by a Debtor to an Affiliate that is a Non-Debtor without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), in each case other than any such transaction that is made in compliance with the Approved Budget (subject to Permitted Variances).

SECTION 6.10 Limitation on Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc. Amend or modify in any manner, the articles or certificate of incorporation or by-laws of the Borrower that is, or would reasonably be expect to be adverse to the Lenders.

SECTION 6.11 Minimum Liquidity. Permit Actual Liquidity as of the last Friday of any calendar week (or, if such day is not a Business Day, the immediately preceding Business Day) to be less than \$30,000,000 (the "Minimum Liquidity Covenant").

SECTION 6.12 Contracts. The Debtors shall inform the Required Lenders prior to:

(a) Pay any claims in excess of \$100,000 individually or that exceeds \$3,000,000 in the aggregate for all vendors that arose prior to the Petition Date without the consent of the Required Lenders (which approval may be communicated by a Direction of the Required Lenders).

(b) Enter into, reject, assume, or renegotiate any new material contract or amendments to any material contract (including, without limitation, any unexpired leases) with any customer or other vendor without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders).

(c) File with the Bankruptcy Court any motion to assume or reject or amend an executory contract under section 365 of the U.S. Bankruptcy Code without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders).

SECTION 6.13 Insolvency Proceeding Claims. Incur, create, assume, suffer to exist or permit, or permit any Subsidiary to incur, create, assume, suffer to exist or permit, any other super priority



administrative claim which is pari passu with or senior to the claim of the Administrative Agent or the Lenders against the Debtors, except as set forth in the DIP Order and the Canadian DIP Recognition Order.

#### SECTION 6.14

SECTION 6.15 Bankruptcy Actions. Seek, consent to, or permit to exist, or permit any Subsidiary to seek, consent to or permit to exist, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), any order granting authority to take any action that is prohibited by the terms of this Agreement, the DIP Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of the DIP Order or any of the other Loan Documents.

SECTION 6.16 Canadian Defined Benefit Plan. No Loan Party shall establish, administer, sponsor, maintain or contribute to any Canadian Defined Benefit Plan, without the prior written consent of the Administrative Agent, and no Loan Party shall accept any liability in respect of any Canadian Defined Benefit Plan, contingent or otherwise, without the prior written consent of the Administrative Agent.

### ARTICLE VII EVENTS OF DEFAULT

SECTION 7.01 Events of Default. If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan when and as the same shall become due and payable hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Section) payable under any Loan Document, when and as the same shall become due and payable hereunder, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall be untrue or incorrect in any material respect when made or deemed made;

(d) Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02(a), 5.04 (with respect to the existence of Holdings, any Intermediate Parent or the Borrower), 5.10, 5.14, 5.19, 5.20, 5.21, 5.23 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section), and such failure (if curable) shall continue unremedied for a period of 5 days;

(f) Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal, interest or otherwise and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to



any applicable grace period) other than with the prior written consent of the Required Lenders, which may be communicated by means of a Direction of the Required Lenders;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (other than with the prior written consent of the Required Lenders, which may be communicated by means of a Direction of the Required Lenders), *provided* that this paragraph (g) shall not apply to (i) Prepetition Indebtedness to the extent the holders thereof are stayed from exercising remedies in connection therewith as a result of the Chapter 11 Cases or the Canadian Recognition Proceeding (it being understood that paragraph (f) of this Section will apply to any failure to make any payment required as a result of any such termination or similar event);

(h) the failure by the Debtors to object to any administrative claim filed in the Chapter 11 Cases or the Canadian Recognition Proceeding over \$1,000,000, or the settlement by the Debtors of any claim in any amount over \$500,000, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders);

(i) [reserved];

(j) one or more enforceable post-petition judgments for the payment of money in an aggregate amount in excess of \$2,500,000 (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not denied its obligation) shall be rendered against Holdings, any Intermediate Parent, the Borrower, any of the Restricted Subsidiaries or any combination thereof, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any post-petition judgment creditor shall legally attach or levy upon assets of such Loan Party that are material to the businesses and operations of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, taken as a whole, to enforce any such judgment;

(k) (i) an ERISA Event or Foreign Plan Event occurs that has resulted or could reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, except, in each case, as could not, reasonably be expected to result in a Material Adverse Effect;

(l) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, except (i) as a result of the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, (ii) [reserved], (iii) as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (iv) as a result of acts or omissions of the Administrative Agent or any Lender;

(m) any provision of any Loan Document or any Guarantee of the Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;



(n) any Guarantees of the Obligations by Holdings, any Intermediate Parent, the Borrower or Subsidiary Loan Party pursuant to the Guarantee Agreement shall cease to be in full force and effect (in each case, other than in accordance with the terms of the Loan Documents);

(o) a Change of Control shall occur;

(p) any RSA Termination Event or termination of the RSA (other than due solely to a breach of the RSA by Lenders constituting Required Lenders);

(q) the Forbearance Agreement is amended without the consent of the Collateral Agent (acting at the Direction of the Required Lenders) or is rescinded, repudiated or terminated or any payment is made or omitted to be made in contravention of its terms;

(r) the entry of an order by the Bankruptcy Court or the Canadian Bankruptcy Court appointing, the filing of an application by any Debtor or any Debtor consenting to or supporting an application by any other Person, for an order seeking the appointment of, in either case without the prior written consent of the Required Lenders, an interim or permanent trustee in any Chapter 11 Case or Canadian Recognition Proceeding or the appointment of a receiver or an examiner under Section 1104 of the U.S. Bankruptcy Code in any Chapter 11 Case with expanded powers (beyond those set forth in Sections 1106(a)(3) and 1106(a)(4) of the U.S. Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Debtors;

(s) other than circumstances whereby the Discharge of DIP Obligations shall concurrently occur, the consummation of a sale of all or substantially all of the Debtors' assets pursuant to a sale under Section 363 of the U.S. Bankruptcy Code or under Canadian Bankruptcy and Insolvency Law, a confirmed plan of reorganization in the Chapter 11 Cases or the Canadian Recognition Proceeding or otherwise or any Loan Party shall file a motion or other pleading or shall consent to or support a motion or other pleading filed by any other Person seeking any of the foregoing, in each case, without the prior written consent of the Required Lenders;

(t) the creation or incurrence by the Debtors of any claim that is senior to or pari passu with the Adequate Protection Superpriority Claims without the prior written consent of the Required Lenders, except, for the avoidance of doubt, in connection with any Permitted Receivables Financing as set forth in the Receivables Order;

(u) the Debtors filing or supporting any motion, pleading, applications or adversary proceeding challenging the validity, enforceability, perfection, or priority of the Prepetition Existing Liens or the Prepetition Existing Obligations or asserting or supporting any other cause of action against and/or with respect to any of the Prepetition Existing Liens, the Prepetition Existing Obligations or any of the Prepetition Existing Secured Parties;

(v) the conversion of any Chapter 11 Case of a Debtor from one under chapter 11 to one under chapter 7 of the U.S. Bankruptcy Code or any Debtor shall file a motion or other pleading or shall consent to or support a motion or other pleading filed by any other Person seeking the conversion of any Chapter 11 Case of a Debtor under Section 1112 of the U.S. Bankruptcy Code or otherwise;

(w) the payment of or granting adequate protection (except for Adequate Protection Payments) that rank senior to or pari passu with the Adequate Protection Payments with respect to any Prepetition Indebtedness (other than as set forth in the DIP Order or any Approved Budget);

(x) [reserved];



(y) (i) the entry by the Bankruptcy Court of any order terminating the Debtors' exclusive periods to file a plan of reorganization or liquidation and solicit acceptances thereon under Section 1121 of the U.S. Bankruptcy Code or (ii) the expiration of any Loan Party's exclusive right to file a plan of reorganization or plan of liquidation;

(z) the dismissal of any Chapter 11 Case or Canadian Recognition Proceeding which does not contain a provision for Discharge of DIP Obligations, or if any Debtor shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case or Canadian Recognition Proceeding which does not contain a provision for the Discharge of DIP Obligations;

(aa) the entry by the Bankruptcy Court of an order granting relief from or modifying the automatic stay of Section 362 of the U.S. Bankruptcy Code or the entry by the Canadian Bankruptcy Court granting relief or modifying the CCAA stay, in each case (x) to allow any creditor to execute upon or enforce a Lien on any Collateral which has a value in excess of \$250,000, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority which has a value in excess of \$250,000;

(bb) the bringing of a motion or taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding, or the entry by the Bankruptcy Court of any order in any Chapter 11 Case or the entry by the Canadian Bankruptcy Court of any order in any Canadian Recognition Proceeding: (i) to obtain additional financing under Section 364(c) or (d) of the U.S. Bankruptcy Code or superpriority pursuant to the CCAA, as applicable, not otherwise permitted pursuant to this Agreement, the DIP Order or the Canadian DIP Recognition Order, as the case may be, except (x) as may be permitted by the Required Lenders and (y) to the extent that such new financing shall result in a Discharge of DIP Obligations substantially concurrently with the incurrence thereof or (ii) except as provided in the DIP Order or the Canadian DIP Recognition Order, to use cash collateral of the Agents or Lenders under Section 363(c) of the U.S. Bankruptcy Code or superpriority pursuant to the CCAA without the prior written consent of the Required Lenders;

(cc) the filing of a motion or the taking of any action in any Chapter 11 Case by any Debtor seeking the entry by the Bankruptcy Court of any order in any Chapter 11 Case, or the entry by the Bankruptcy Court of an order in any Chapter 11 Case, granting any Lien that is *pari passu* or senior to the Liens on the Collateral securing the Obligations, other than Liens expressly permitted under this Agreement or the DIP Order;

(dd) the filing of a motion or the taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding by any Debtor seeking an order, or the entry by the Bankruptcy Court of an order in any Chapter 11 Case or the Canadian Bankruptcy Court, amending, supplementing, staying, vacating or otherwise modifying any Loan Document, the DIP Order, the Canadian DIP Recognition Order or the Cash Management Order, in each case, in a manner that is adverse to the Lenders, in their capacities as such, without the prior written consent of the Required Lenders;

(ee) the filing of a motion or the taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding by any Debtor seeking the entry by the Bankruptcy Court of an order in any Chapter 11 Case or the entry by the Canadian Bankruptcy Court of an order in any Canadian Recognition Proceeding, or the entry by the Bankruptcy Court of an order in any Chapter 11 Case, avoiding or requiring repayment by any Lender of any portion of the payments made by any Debtor on account of the Obligations owing under this Agreement or the other Loan Documents (other than any motion seeking approval of the Receivables Order);



(ff) the filing of a motion by any Debtor requesting, or the entry of any order by the Bankruptcy Court granting, any superpriority claim which is senior or pari passu with the Lenders' claims or with the claims of the Prepetition Existing Lenders under the Prepetition Existing Loan Documents;

(gg) the filing of a motion or the taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding by any Debtor seeking the entry of an order by the Bankruptcy Court or the Canadian Bankruptcy Court, as applicable, or the entry by the Bankruptcy Court or Canadian Bankruptcy Court, as applicable, of an order in any Chapter 11 Case or Canadian Recognition Proceeding, as applicable, precluding the Administrative Agent or the Prepetition Existing Administrative Agent to have the right to or be permitted to "credit bid";

(hh) any attempt by any Loan Party to reduce, set off or subordinate the Obligations or the Liens securing such Obligations to any other Indebtedness;

(ii) the filing by any Loan Party of any chapter 11 plan of reorganization or disclosure statement attendant thereto, or any amendment to such plan or disclosure, that is not an Acceptable Plan without the prior written consent of the Required Lenders;

(jj) the filing by any of the Debtors of any motion, objection, application or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination or characterization of, any portion of the Prepetition Existing Obligations or the Obligations, and/or the liens securing the Prepetition Existing Obligations or the Obligations or asserting any other claim or cause of action against and/or with respect to the Prepetition Existing Obligations, the Obligations, the liens securing the Prepetition Existing Obligations, the lien securing the Obligations, the Prepetition Existing Administrative Agent or the Administrative Agent (or if any Debtor files a pleading supporting any such motion, application or adversary proceeding commenced by any third party) or (ii) the entry of an order by the Bankruptcy Court providing relief adverse to the interests of any Lender, Prepetition Existing Lender, the Prepetition Existing Administrative Agent or the Administrative Agent with respect to any of the foregoing claims, causes of action or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding; or

(kk) an order in the Chapter 11 Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the U.S. Bankruptcy Code against the Administrative Agent and the Secured Parties or (ii) limiting the extension under Section 552(b) of the U.S. Bankruptcy Code of the Liens of the Prepetition Existing Administrative Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date (or granting any other relief under section 552(b) of the U.S. Bankruptcy Code) or the commencement of other actions that is adverse to the Administrative Agent, the Secured Parties or their respective rights and remedies under the Loan Documents in any of the Chapter 11 Cases or inconsistent with any of the Loan Documents;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Article), but subject to the terms and conditions of the DIP Order, and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any of the following actions, at the same or different times and upon written notice thereof by the Administrative Agent (which such notice shall be made to the Debtors, the Committee, counsel to PNC Bank (as defined in the Receivables Order), and the U.S. Trustee for the District of New Jersey (the "U.S. Trustee") and shall be referred to herein as a "Termination Declaration" and the date which is the earliest to occur of any such Termination Declaration (excluding the notice period) being herein referred to as the "Termination Declaration Date"): (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be



due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and (iii) declare a restriction or termination of the Debtors' ability to use Cash Collateral.

In addition, five (5) Business Days following the Termination Declaration Date (such five (5) Business Day period, the "Remedies Notice Period"), absent the Debtors curing all such existing Events of Default during such Remedies Notice Period, the Agents, subject to other applicable conditions set forth in the DIP Order, may foreclose on all or any portion of the Collateral, collect accounts receivable and, subject to the Carve-Out and the CCAA Administration Charge, apply the proceeds thereof to the Obligations in accordance with Section 7.02, occupy the Loan Parties' premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable non-bankruptcy law and the DIP Order. During the Remedies Notice Period, the Debtors and any statutory committee shall be entitled to seek an emergency hearing before the Bankruptcy Court for the sole purpose of determining whether an Event of Default has occurred.

SECTION 7.02 Application of Proceeds. After the exercise of remedies provided for in Section 7.01, subject to the Carve-Out and the CCAA Administration Charge, any amounts received on account of the Obligations, shall be applied as set forth in Section 2.16(f).

## ARTICLE VIII THE ADMINISTRATIVE AGENT; ESCROW AGENT; SECURITY TRUSTEE

### SECTION 8.01 Administrative Agent.

(a) Each of the Lenders hereby irrevocably appoints Wilmington Savings Fund Society, FSB to serve as Administrative Agent, collateral agent and trustee under the Loan Documents, and authorizes the Administrative Agent to take such actions and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Further, the Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents, trustees and attorneys-in-fact appointed by the Administrative Agent pursuant to this Section 8.01 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the Direction of the Required Lenders), shall be entitled to the benefits of all provisions of this Article VIII (including paragraph 13 hereof) and Article IX (as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the other Secured Parties, and none of Holdings, the Borrower or any other Loan Party shall have any rights as a third party beneficiary of any such provisions.

(b) The Person serving as the Administrative Agent hereunder shall be permitted to generally engage in any kind of business with Holdings, the Borrower or any other Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.



(c) The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or to exercise any discretionary power, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in the Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings, the Borrower, any other Subsidiary or any other Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Holdings, the Borrower, a Lender and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent.

(d) The Administrative Agent shall be entitled to rely, and shall not incur any liability for relying, upon any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person (including, if applicable, a Responsible Officer or Financial Officer of such Person). The Administrative Agent also may rely, and shall not incur any liability for relying, upon any statement made to it orally or by telephone and believed by it to be made by the proper Person (including, if applicable, a Financial Officer or a Responsible Officer of such Person). The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(e) The Administrative Agent may perform any of and all its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of and all their duties and exercise their rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.



(f) Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign upon 30 days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (unless an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent, which shall be (a) an Approved Bank with an office in New York, New York, or an Affiliate of any such Approved Bank and (b) approved by the Borrower (unless an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing) (the date upon which the retiring Administrative Agent is replaced, the "Resignation Effective Date"); *provided*, that if no such successor shall have been appointed (and shall have accepted such appointment) within 45 days after the retiring Administrative Agent gives notice of its resignation, such resignation shall nevertheless become effective, and the Resignation Effective Date shall occur on such date. If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent that has accepted such appointment, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent.

(g) If the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders and the Borrower may, to the extent permitted by applicable law, by notice in writing to such Person remove such Person as Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(h) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and (ii) with respect to any outstanding payment obligations) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.



(i) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender, or any of the Related Parties of any of the foregoing, or any of the financial advisors of the Loan Parties, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(j) Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

(k) No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.

(l) Notwithstanding anything herein to the contrary, each Person named on the cover page of this Agreement shall have the benefit of the indemnities provided for hereunder, including under Section 9.03, fully as if named as an indemnitee or indemnified person therein and irrespective of whether the indemnified losses, claims, damages, liabilities and/or related expenses arise out of, in connection with or as a result of matters arising prior to, on or after the effective date of any Loan Document.

(m) To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. Without limiting or expanding the provisions of Section 2.15, each Lender shall, and does hereby, indemnify the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the U.S. Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan



Document against any amount due the Administrative Agent under this paragraph. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other obligations under any Loan Document.

(n) Each Secured Party hereby appoints the Administrative Agent to act as its agent under and in connection with the relevant Security Documents and acknowledges that the Administrative Agent is the beneficiary of the security interests granted thereunder and the Administrative Agent will accept such grants of security interests under the relevant Security Documents on its behalf and will enter into the relevant Security Documents as secured party, lienholder or pledgee in its own name.

SECTION 8.02 Escrow Agent.

(a) Each of the Lenders (and the other Secured Parties by their acceptance of the benefits under the Loan Documents) irrevocably designates and appoints the Escrow Agent as its agent under this Agreement and the other Loan Documents with and irrevocably authorizes the Escrow Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Escrow Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Escrow Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender (or other Secured Party), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Escrow Agent.

(b) For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, the Escrow Agreement, or any additional document, instrument, certificate and/or agreement related to any of the foregoing, each of the parties hereto and Escrow Agent acknowledge and agree that in no event shall any Deposit Property (as such term is defined in the Escrow Agreement) or other property, proceeds, cash, cash equivalents, or otherwise placed or held, in each case, in the Loan Proceeds Account at any time be, or be deemed to be, property of any of the Borrower or its affiliates or subsidiaries or any of their respective bankruptcy estates.

SECTION 8.03 Collateral Agent as Security Trustee of UK Collateral Documents. For the purposes of any Liens created under a UK Collateral Document, the following additional provisions shall apply, in addition to the provisions set out above or otherwise hereunder:

(a) In this Section, the following expressions have the following meanings:

“Charged Property” means the assets of any of the Loan Parties which from time to time are, or are expressed to be, the subject to a security interest under a UK Collateral Document.

(b) Each Lender appoints the Collateral Agent to hold the security interests constituted by the UK Collateral Document on trust for the Lenders on the terms of the Loan Documents and the Collateral Agent accepts that appointment.

(c) Each Lender confirms its approval of the UK Collateral Documents and authorizes and instructs the Collateral Agent: (i) to execute and deliver the UK Collateral Documents; (ii) to exercise the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions given to the Collateral Agent (in its capacity as security trustee) under or in connection with the UK Collateral Documents together with any other incidental rights, powers, authorities and discretions; and (iii) to give



any authorizations and confirmations to be given by the Collateral Agent (in its capacity as security trustee) on behalf of the Lenders under the UK Collateral Documents.

(d) Each Lender confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by a UK Collateral Document and accordingly authorizes: (a) the Collateral Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (b) the U.K. Land Registry (or other relevant registry) to register the Collateral Agent as a sole proprietor of such security interest.

(e) Section 1 of the Trustee Act 2000 (U.K.) shall not apply to the duty of the Collateral Agent in relation to the trusts constituted by this Agreement.

(f) In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1925 (U.K.) or the Trustee Act 2000 (U.K.), the provisions of this Agreement shall prevail to the extent allowed by law, and shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000 (U.K.).

#### SECTION 8.04 Québec Collateral.

(a) For greater certainty, and without limiting the powers of the Administrative Agent or any other Person acting as mandatary (agent) of the Administrative Agent, each of the Secured Parties hereby irrevocably appoints the Administrative Agent as the hypothecary representative for all present and future Secured Parties pursuant to Article 2692 of the Civil Code of Québec in order to hold all hypothecs granted by any Loan Party on property pursuant to the laws of the Province of Québec. The execution by the Administrative Agent, acting as hypothecary representative, prior to the Effective Date, of any deed of hypothec is hereby ratified and confirmed.

(b) The (b) appointment of the Administrative Agent as hypothecary representative for the benefit of the Secured Parties, shall be deemed to have been ratified and confirmed by each Person accepting an assignment of, a participation in or an arrangement in respect of, all or any portion of any Secured Parties' rights and obligations under this Agreement by the execution of an assignment, including an assignment or other agreement pursuant to which it becomes such assignee or participant, and by each successor Administrative Agent by the execution of an assignment or other agreement, or by the compliance with other formalities, as the case may be, pursuant to which it becomes a successor Administrative Agent under this Agreement. The Administrative Agent hereby confirms having accepted to act as hypothecary representative of all present and future Secured Parties for all purposes of Article 2692 of the Civil Code of Québec. Each successor Administrative Agent appointed in accordance with the terms of this Agreement shall automatically (and without any further act or formality) become the successor hypothecary representative under each deed of hypothec referred to above.

(c) The Administrative Agent acting as hypothecary representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of the Administrative Agent herein, which shall apply mutatis mutandis to the Administrative Agent acting as hypothecary representative.



ARTICLE IX  
MISCELLANEOUS

SECTION 9.01 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, e-mail or other electronic transmission, as follows:

(a) If to Holdings or the Borrower, to:

Cyxtera DC Holdings, Inc.  
2333 Ponce de Leon Blvd, Suite 900  
Coral Gables, FL USA 33134  
Attn: Carlos Sagasta and Victor Semah  
Phone (305) 375-6000  
Email: carlos.sagasta@cyxtera.com and victor.semah@cyxtera.com

With copies to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Joshua N. Korff, P.C. and Ben Steadman  
Christopher Marcus, P.C., and Derek I. Hunter  
Email: joshua.korff@kirkland.com and ben.steadman@kirkland.com  
christopher.marcus@kirkland.com, and derek.hunter@kirkland.com

(b) If to the Administrative Agent, to:

WSFS Institutional Services  
500 Delaware Ave  
Wilmington, DE USA 19801  
Attn: John McNichol  
Phone (302) 573-3269  
Email: jmcnichol@wsfsbank.com

and

With copies to:

ArentFox Schiff LLP  
1301 Avenue of the Americas  
New York, NY 10019  
Attention: Jeffrey Gleit  
Email: Jeffrey.Gleit@afslaw.com

(c) If to the Escrow Agent, to:

The Bank of New York Mellon  
500 Ross Street, 12th Floor  
Pittsburgh, PA 15262  
Attention: Alicia Strobe  
Tel: (412) 234-0295  
Email: alicia.c.strobe@bnymellon.com



and

With copies to: Bryan Cave Leighton Paisner LLP  
1290 Avenue of the Americas  
New York, NY 10104  
Attention: Jeremy Finkelstein  
Tel: (212) 541-3071  
Email: Jeremy.finkelstein@bclplaw.com

(d) if to any other Lender, to it at its address (or fax number or email address) set forth in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax or other electronic transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient).

Holdings and the Borrower may change their address, email or facsimile number for notices and other communications hereunder by notice to the Administrative Agent, the Administrative Agent may change its address, email or facsimile number for notices and other communications hereunder by notice to Holdings and the Borrower and the Lenders may change their address, email or facsimile number for notices and other communications hereunder by notice to the Administrative Agent. Notices and other communications to the Lenders hereunder may also be delivered or furnished by electronic transmission (including email and Internet or intranet websites) pursuant to procedures reasonably approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic transmission.

Notwithstanding anything herein or in any other Loan Document providing for the delivery of any Approved Electronic Communication by any other means, the Loan Parties shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent to jmcnichol@wsfsbank.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify to the Borrower (which notice shall be effective upon acknowledgement of receipt thereof by the Borrower). Nothing in this paragraph shall prejudice the right of the Administrative Agent or any Lender Party to deliver any Approved Electronic Communication to any Loan Party in any manner authorized in this Agreement or to request that the Borrower effect delivery in such manner.

Each of the Lenders and each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lender Parties by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”). Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single- user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lender Parties and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other



risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lender Parties and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

Nothing in this Agreement or in any other Loan Document shall be construed to limit or affect the obligation of the Loan Parties or any other Person to serve upon the Administrative Agent, the Collateral Agent and the Lenders in the manner prescribed by the U.S. Bankruptcy Code any pleading or notice required to be given to the Administrative Agent, the Collateral Agent and the Lenders pursuant to the U.S. Bankruptcy Code.

SECTION 9.02 Waivers; Amendments.

(a) No failure or delay by any of the Agents or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.12, neither any Loan Document nor any provision thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent (to the extent that such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Administrative Agent under this Agreement, the Administrative Agent shall execute such waiver, amendment or other modification to the extent approved by the Required Lenders) and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders, *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness in principal) or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby, *provided* that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay default interest pursuant to Section 2.11(c), (iii) postpone the maturity of any Loan (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity date), or the date of any scheduled amortization payment of the principal amount of any Loan under Section 2.08 or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the



written consent of each Lender directly and adversely affected thereby, (iv) change any of the provisions of this Section without the written consent of each Lender directly and adversely affected thereby, *provided* that any such change which is in favor of a Class of Lenders holding Loans maturing after the maturity of other Classes of Lenders (and only takes effect after the maturity of such other Classes of Loans or Commitments) will require the written consent of the Required Lenders with respect to each Class directly and adversely affected thereby, (v) change any of the provisions of this Section or the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vi) release all or substantially all the value of the Guarantees under the Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender (other than a Defaulting Lender or a Disqualified Lender), (vii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender (other than a Defaulting Lender or a Disqualified Lender) (except as expressly provided in the Loan Documents), (viii) change any of the provisions of Section 2.16(b), Section 2.16(c) or any other provision in the Loan Documents in a manner that would by its terms alter the pro rata sharing and/or application of payments or proceeds of Collateral required thereby or any other provision in the Loan Documents in a manner that would by its terms alter the pro rata sharing and/or application of payments or proceeds of Collateral required thereby without the written consent of each Lender directly and adversely affected thereby, (ix) permits the creation or the existence of any Subsidiary that would be "unrestricted" or otherwise excluded from the requirements, taken as a whole, applicable to Subsidiaries pursuant to this Agreement without the written consent of each Lender affected thereby, (x) amend or modify the definition of "Material Intellectual Property" or "Material Intellectual Property Provision" or the last paragraph of Section 6.05 or the last paragraph of Section 6.06 without the written consent of each Lender directly and adversely affected thereby, (xi) authorize additional Indebtedness that would be issued under the Loan Documents for the purpose of influencing voting thresholds without the written consent of each Lender directly and adversely affected thereby, (xii) amend or modify the Loan Documents to allow for purchases of Term Loans (by dutch auction, open market purchase or through other assignments) by Holdings, any Intermediate Parent, the Borrower or any of their Subsidiaries or Affiliates, in each case, using consideration other than cash without the written consent of each Lender directly and adversely affected thereby, (xiii) amend or modify Section 9.15 or provide that Subsidiaries that are not wholly-owned Subsidiaries are not required to become Subsidiary Loan Parties without the written consent of each Lender directly and adversely affected thereby or (xiv) subordinates the Obligations to any other Indebtedness or subordinates the Lien securing the Obligations to any other Lien securing any other Indebtedness without the written consent of Lenders having Term Loans and unused Commitments representing more than 66.67% of the aggregate Dollar Amount of Term Loans and unused Commitments (*provided* that, to the extent that any Lender is providing such other Indebtedness, the opportunity to participate in such financing shall be offered to all other Lenders on a pro rata basis), *provided further*, that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent, (B) [reserved], (C) [reserved], (D) the Administrative Agent may, from time to time on and after the Effective Date, without any further consent of any Lender, enter into amendments to, amendments and restatements of, and/or replacements of, any intercreditor agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted under this Agreement, in each case, in order to effect the first-priority Liens on the Collateral and to provide for certain additional rights, obligations and limitations in respect of, any Liens required by the terms of this Agreement to be junior priority Liens or other Liens that are, in each case, incurred in accordance with Article VI of this Agreement, and to establish certain relative rights as between the holders of the Secured Obligations and the holders of the Indebtedness secured by such Liens, (E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by Holdings, the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency; provided that, such amendment shall be posted for review by



the Lenders, and such amendment shall become effective only if Required Lenders have not objected to such amendment within ten (10) Business Days, (F) [reserved] and (G) [reserved]. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents, *provided* that such credit facilities shall rank *pari passu* or junior in terms of both priority of Liens on Collateral securing, and right of payment with, the Secured Obligations, and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion, (b) this Agreement and other Loan Documents may be amended or supplemented by an agreement or agreements in writing entered into by the Administrative Agent and Holdings, the Borrower or any Loan Party as to which such agreement or agreements is to apply, without the need to obtain the consent of any Lender, to include “parallel debt” or similar provisions, and any authorizations or granting of powers by the Lenders and the other Secured Parties in favor of the Administrative Agent, in each case required to create in favor of the Administrative Agent any security interest contemplated to be created under this Agreement, or to perfect any such security interest, where the Administrative Agent shall have been advised by its counsel that such provisions are necessary or advisable under local law for such purpose (with Holdings and the Borrower hereby agreeing to, and to cause their subsidiaries to, enter into any such agreement or agreements upon reasonable request of the Administrative Agent promptly upon such request) and (c) upon notice thereof by the Borrower to the Administrative Agent with respect to the inclusion of any previously absent financial maintenance covenant, this Agreement shall be amended by an agreement in writing entered into by the Borrower and the Administrative Agent without the need to obtain the consent of any Lender to include such covenant on the date of the incurrence of the applicable Indebtedness to the extent required by the terms of such definition or section.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders, to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section being referred to as a “Non-Consenting Lender”), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment), *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld,

(d) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.09(a)(i)), payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) unless waived, the Borrower or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b).

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Loans of any Lender that is at the time (i) [reserved], (ii) a Defaulting Lender or (iii) a Disqualified Lender, shall not have any voting or approval rights under the Loan Documents and shall be excluded in



determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class) or the Required Lenders, have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(f) [Reserved].

(g) Notwithstanding anything to the contrary contained in this Section 9.02, the Guarantee, the Security Documents and related documents executed by Holdings, any Intermediate Parent, the Borrower or its Subsidiaries in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent (acting at the Direction of the Required Lenders) at the reasonable request of the Borrower without the need to obtain the further consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) cure ambiguities or defects or (iii) to cause the Guarantee, the Security Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein).

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) Subject to the DIP Order, the Borrower shall pay, whether accrued or incurred prior to, on, or after the Petition Date, (i)(A) all reasonable and documented or invoiced out-of-pocket expenses incurred by each of the Administrative Agent and the Escrow Agent and its respective Affiliates (without duplication), including the reasonable fees, charges and disbursements of counsel for each such Agent, respectively, and to the extent reasonably determined by such Agent to be necessary local counsel in each applicable jurisdiction or otherwise retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), in each case for each such Agent, respectively, and to the extent retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), consultants, in connection with their due diligence investigation, the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (B) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Required Lenders, including the reasonable fees, charges and disbursements of counsel for the Required Lenders and to the extent reasonably determined by the Required Lenders to be necessary local counsel in each applicable jurisdiction or otherwise retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), in each case for the Required Lenders, and to the extent retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), consultants, in connection with their due diligence investigation, the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (ii) (A) all reasonable and documented or invoiced out-of-pocket expenses incurred by each of the Administrative Agent and the Escrow Agent and its respective Affiliates, including the fees, charges and disbursements of counsel for each such Agent, respectively, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that such counsel shall be limited to one lead counsel and local counsel in each applicable jurisdiction and, in the case of an actual or perceived conflict of interest, additional counsel per affected party and (B) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Required Lenders, including the fees, charges and disbursements of counsel for the Required Lenders, in connection with the enforcement or protection of their rights in connection with the Loan Documents, including their rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during



any workout, restructuring or negotiations in respect of such Loans; *provided* that such counsel shall be limited to lead counsel and local counsel in each applicable jurisdiction and, in the case of an actual or perceived conflict of interest, additional counsel per affected party.

(b) Subject to the DIP Order, the Borrower shall indemnify each Agent, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, whether accrued or incurred prior to, on, or after the Petition Date, any and all losses, claims, damages, liabilities and reasonable and documented or invoiced out-of-pocket fees and expenses of one counsel and one local counsel in each applicable jurisdiction (and, in the case of an actual or perceived conflict of interest, where the Indemnatee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional counsel for such affected Indemnatee) for all similarly situated Indemnitees, taken as whole (which may include a single special counsel acting in multiple jurisdictions), incurred by or asserted against any such Indemnatee by any third party or by Holdings, any Intermediate Parent, the Borrower or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) to the extent in any way arising from or relating to any of the foregoing, any actual or alleged presence or Release of Hazardous Materials on, at or from any Mortgaged Property or any other property currently or formerly owned or operated by Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary, or any other Environmental Liability, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings, any Intermediate Parent, the Borrower or any Subsidiary and regardless of whether any Indemnatee is a party thereto, *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of the Loan Documents by, such Indemnatee or its Related Parties or (ii) result from any dispute between and among indemnified persons that does not involve an act or omission by Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries or any of their representatives, except that each Agent and the Lenders shall be indemnified in their capacities as such to the extent that none of the exceptions set forth in clause (i) applies to such Person at such time. This Section 9.03 shall not apply to Taxes other than any Taxes with respect to losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, and without limiting the Borrower’s obligation to do so, each Lender severally agrees to pay to the Administrative Agent such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such or in its capacity as Collateral Agent. For purposes hereof, a Lender’s “pro rata share” shall be determined based upon its share of the aggregate outstanding Loans and unused Commitments at the time.

(d) To the fullest extent permitted by applicable law, none of Holdings, any Intermediate Parent, the Borrower or any of its Subsidiaries shall assert, and each hereby waives, any claim against any Indemnatee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), *provided* that such indemnity shall not, as to any Indemnatee, be available to the extent that such damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from



the gross negligence or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties, or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than 10 Business Days after written demand therefor; *provided, however*, that any Indemnitee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnitee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section), the financial advisors of the Loan Parties (to the extent expressly provided in Article 8) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in paragraphs (b)(ii), (f) and (h) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it under one or more Facilities) with the prior written consent (such consent (except with respect to assignments to competitors of the Borrower) not to be unreasonably withheld or delayed) of (A) the Borrower, *provided* that no consent of the Borrower shall be required for an assignment by any Term Lender of Term Loans to any Lender or to an Affiliate of any Lender, (iii) any Term Lender of Term Loans to an Approved Fund or (iv) if an Event of Default has occurred and is continuing, any Lender to any other Eligible Assignee; and *provided further*, that the Borrower shall have the right to withhold its consent to any assignment if, in order for such assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority and (B) the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required (x) for an assignment of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund or to the Borrower or any Affiliate thereof. Notwithstanding anything in this Section 9.04 to the contrary, if the consent of the Borrower is otherwise required by this paragraph with respect to any assignment of Loans, and the Borrower has not given the Administrative Agent written notice of its objection to such assignment within 3 Business Days after written notice to the Borrower, the Borrower shall be deemed to have consented to such assignment or (y) in connection with the Primary Syndication.

(i) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not



be less than \$1,000,000 unless the Borrower and the Administrative Agent otherwise consent (such consent not to be unreasonably withheld or delayed), *provided* that no such consent of the Borrower shall be required if an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing, (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, *provided* that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together (unless waived by the Administrative Agent) with a processing and recordation fee of \$3,500 (*provided* that (x) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment), *provided* that assignments made pursuant to Section 2.17(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective; and (D) the assignee, if it shall not be a Lender, shall deliver to the Borrower and the Administrative Agent any tax forms required by Section 2.15(e) and shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.13, 2.15 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c)(i) of this Section.

(iii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and stated interest amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Holdings, the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 9.04(b)(iii) shall be construed so that all Loans are at all times maintained in registered form under Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and Section 5f.103-1(c) of the United States Treasury Regulations.



(iv) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.15(e) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(v) The words "execution," "signed," "signature" and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other Persons (other than to the Borrower or any of its Affiliates or a Person that is not an Eligible Assignee; a "Participant"), *provided further*, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.13 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 2.16(c) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.13 or Section 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior consent (not to be unreasonably withheld or delayed).

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"), *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary in connection with a Tax audit or other proceeding to establish that such Commitment, Loan, or other obligation is in registered form under Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and Section 5f.103-1(c) of the



United States Treasury Regulations. The entries in the Participant Register shall be conclusive (absent manifest error), and each Person whose name is recorded in the Participant Register pursuant to the terms hereof shall be treated as a Participant for all purposes of this Agreement, notwithstanding notice to the contrary.

(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank, and this Section shall not apply to any such pledge or assignment of a security interest, *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle (an “SPV”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement, *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, such party will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(f) Notwithstanding anything herein to the contrary, except with the consent of the Required Consenting Term Lenders (as defined in the RSA), none of the Lenders may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees prior to the closing of all assignments made in connection with the Primary Syndication (if any) and any prohibited assignment shall be absolutely void ab initio, and the Administrative Agent shall not record such assignment on the Register or treat any purported transferee of such Loan as the owner of such Loan.

(g) Following the Effective Date, if so elected at the sole option of the Required Lenders, each Lender shall, in connection with the Primary Syndication, be obligated to assign its Loans and Commitments in accordance with the Primary Syndication Procedures to each participating Eligible Holder (as defined in the Primary Syndication Procedures) in accordance with the Primary Syndication Procedures. The Required Consenting Term Lenders (as defined in the RSA) in consultation with the Administrative Agent shall be authorized to establish a syndication escrow account in connection with the Primary



Syndication Procedures (i) to hold the proceeds of the Primary Syndication and (ii) to accept and disburse funds from such syndication escrow account in accordance with the Primary Syndication Procedures. Notwithstanding anything to the contrary, no consent of the Borrower shall be required for an assignment made in connection with the Primary Syndication.

(h) Notwithstanding anything herein or in any other Loan Document to the contrary, no Lender may assign any portion of its Loans or Commitments to any Disqualified Lender or to Holdings, the Borrower or any of their respective Subsidiaries and Affiliates.

(i) Notwithstanding anything herein or in any other Loan Document to the contrary, the Administrative Agent shall not (i) except to the extent of its own gross negligence or willful misconduct in taking or failing to take any action, be responsible for, have any liability with respect to, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders or have any liability with respect to or arising out of any assignment or participation of Loans or Commitments to any Disqualified Lender and (ii) except to the extent arising out of its or its Related Parties' gross negligence or willful misconduct, have any liability with respect to any disclosure of confidential information to any Disqualified Lender.

**SECTION 9.05 Survival.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and until the Discharge of DIP Obligations has occurred. The provisions of Sections 2.13, 2.15 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, or the Discharge of DIP Obligations.

**SECTION 9.06 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 9.07 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.



SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, subject to the DIP Order, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of the Borrower or any other Loan Party against any of and all the obligations of the Borrower or any other Loan Party then due and owing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender shall notify the Borrower and the Administrative Agent of such setoff and application, *provided* that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Notwithstanding the foregoing, no amount set off from any Guarantor shall be applied to any Excluded Swap Obligation from such Guarantor.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York, and, to the extent applicable, the U.S. Bankruptcy Code.

(b) Each of parties hereto hereby irrevocably and unconditionally submits (except to the extent expressly set out in those Loan Documents which are expressed to be governed by English Law), for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court, and, if the Bankruptcy Court does not have, or abstains from jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against Holdings, the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each of parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED



THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality.

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and any failure of such Persons to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Administrative Agent or the relevant Lender, as applicable), (b) (x) to the extent requested by any regulatory (including self-regulatory) authority, required by applicable law or by any subpoena or similar legal process or (y) necessary in connection with the exercise of remedies; *provided* that, (i) in each case, unless specifically prohibited by applicable law or court order, each Lender and the Administrative Agent shall notify the Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency or other routine examinations of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information and (ii) in the case of clause (y) only, each Lender and the Administrative Agent shall use reasonable best efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, and *provided further*, that in no event shall any Lender or the Administrative Agent be obligated or required to return any materials furnished by Holdings, the Borrower or any of their Subsidiaries, (c) to any other party to this Agreement, (d) subject to an agreement containing confidentiality undertakings substantially similar to those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to any Loan Party or their Subsidiaries and its obligations under the Loan Documents, (e) with the consent of the Borrower, in the case of Information provided by Holdings, the Borrower or any other Subsidiary, (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than Holdings or the Borrower, (g) the Bankruptcy Court in connection with the approval of the Transactions contemplated hereby; or (h) to any ratings agency or the CUSIP Service Bureau on a confidential basis. In addition, the Agents and the Lenders may disclose the existence of this Agreement and publicly available information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments and the Borrowings hereunder. For the purposes of this Section, "Information" means all information received from Holdings or the Borrower relating to Holdings, the Borrower, any Subsidiary or their business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by Holdings or the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same



degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT, WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13 USA Patriot Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of Title III of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify each Loan Party in accordance with the Title III of the USA Patriot Act.

SECTION 9.14 [Reserved].

SECTION 9.15 Release of Liens and Guarantees. A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary. Upon (i) any sale or other transfer by any Loan Party (other than to Holdings, any Intermediate Parent, the Borrower or any other Loan Party) of any Collateral in a transaction permitted under this Agreement or (ii) the effectiveness of any written consent to the release of the security interest created under the Security Documents in any Collateral or the release of any Loan Party from its Guarantee under the Guarantee Agreement pursuant to Section 9.02, the security interests in such Collateral created by the Security Documents or such guarantee shall be automatically released. Upon the Discharge of DIP Obligations, all obligations under the Loan Documents and all security interests created by the Security Documents shall be automatically released. In connection with any termination or release pursuant to this Section, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent. The Lenders and other Secured Parties irrevocably authorize the Administrative Agent to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such



property that is permitted by Section 6.02(iv) or (xii) to the extent required by the terms of the obligations secured by such Liens pursuant to documents reasonably acceptable to the Administrative Agent. Notwithstanding anything to the contrary, no Subsidiary Loan Party shall be automatically released from its Guarantee (and related Collateral security) solely by virtue of such Person becoming an Excluded Subsidiary, other than in each case, in connection with a transaction permitted under this Agreement that was done for a bona fide business purpose and not in contemplation of adversely affecting the Secured Parties' interests in the Guarantees and Collateral.

SECTION 9.16 No Fiduciary Relationship. Each of Holdings and the Borrower, on behalf of itself and its subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, Holdings, the Borrower, the other Subsidiaries and their Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lenders or their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

SECTION 9.17 [Reserved].

SECTION 9.18 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 9.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or



(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.20 [Reserved].

SECTION 9.21 Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to any party hereto or any holder of any obligation owing hereunder (the “Applicable Creditor”) shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than the currency in which such sum is stated to be due hereunder (the “Agreement Currency”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the applicable Loan Parties agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

SECTION 9.22 Erroneous Payments.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 9.22 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have



been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower.

(d) Each party's obligations under this Section 9.22 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Documents.

SECTION 9.23 Incorporation of DIP Order. Each of the Loan Parties, the Administrative Agent, the Collateral Agent and the Lenders agrees that any reference contained herein to the DIP Order shall include all terms, conditions and provisions of such DIP Order and that the DIP Order is incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement (or any other Loan Document) and the terms of the DIP Order, the terms of the DIP Order shall govern.

SECTION 9.24 Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Loan Parties, the estate of each Loan Party, and any trustee, other estate representative or any successor in interest of each Loan Party in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the U.S. Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Agents and the Secured Parties and their respective permitted assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Loan Parties to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Collateral Agent file financing statements or otherwise perfect its Liens under applicable law. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of the Loan Parties, the Agents and Secured Parties with respect to the transactions contemplated hereby and no Person (other than the Indemnitees) shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

SECTION 9.25 Lender Consent to Credit Bid. Each Lender hereby irrevocably (x) authorizes and directs the Collateral Agent to, in a manner determined by the Required Lenders and subject to the Collateral Agent's rights and protections (including requesting direction and indemnity), credit bid all or any portion of the Obligations in connection with any "credit bid" and (y) in connection with any credit bid, consents to the assignment and delegation to a Qualified Purchaser of such rights and obligations under this Agreement and the other Loan Documents, in each case as the Required Lenders determine in order to



consummate such credit bid (and each such Lender shall execute and deliver such documents as the Collateral Agent reasonably requests to evidence such assignment and delegation). As used herein, “Qualified Purchaser” shall mean a Person (i) designated by the Required Lenders as a “Qualified Purchaser” in connection with any such credit bid, (ii) whose stock is owned pro rata by the Lenders (based upon the obligations owing to such Lenders and utilized to consummate such credit bid) and (iii) whose actions are controlled by the Required Lenders.

*[Remainder of page intentionally blank; signature pages follow.]*







This is **Exhibit "HH"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2024



SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of June [6], 2023

by and among

CYXTERA DC PARENT HOLDINGS, INC.  
as Initial Holdings,

CYXTERA DC HOLDINGS, INC.,  
as the Borrower,

The Lenders Party Hereto,

and

Wilmington Savings Fund Society, FSB,  
as Administrative Agent and Collateral Agent

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SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of June [6], 2023 (this “Agreement”), by and among CYXTERA DC PARENT HOLDINGS, INC., a Delaware corporation (“Initial Holdings”), CYXTERA DC HOLDINGS, INC., a Delaware corporation, as borrower (in such capacity, the “Borrower”), the LENDERS party hereto, and Wilmington Savings Fund Society, FSB, as Administrative Agent and as Collateral Agent.

Capitalized terms used in the recitals below that are not otherwise defined therein have the respective meanings set forth in Section 1.01.

WHEREAS, on June [4], 2023 (the “Petition Date”), Holdings, the Borrower and certain Subsidiaries of the Borrower (collectively, the “Debtors” and, each individually, a “Debtor”) commenced cases (the “Chapter 11 Cases”) under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of [New Jersey] (the “Bankruptcy Court”). The Debtors continue to operate their businesses as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, within four days of the Petition Date, Cyxtera Technologies, Inc., in its capacity as foreign representative on behalf of the Debtors, will file an application with The Court of King’s Bench of Alberta (the “Canadian Bankruptcy Court”) pursuant to Part IV of the CCAA to, among other things, recognize the Chapter 11 Cases as “foreign main proceedings” and grant certain customary related relief (the “Canadian Recognition Proceeding”);

WHEREAS, prior to the Petition Date, the Lenders (together with the other Prepetition Priority Lenders (as defined below)) provided financing to the Borrower pursuant to that certain First Lien Priority Credit Agreement, dated as of May 4, 2023, among Initial Holdings, the Borrower, as borrower, Barclays Wilmington Savings Fund Society, FSB, as Administrative Agent and Collateral Agent (the “Prepetition Priority Administrative Agent”), and the lenders party thereto from time to time (the “Prepetition Priority Lenders”) (as so amended, and as further amended, restated, supplemented or otherwise modified from time to time through the Petition Date, the “Prepetition Priority Credit Agreement”);

WHEREAS, on the Petition Date, the Prepetition Priority Lenders under the Prepetition Priority Credit Agreement were owed approximately \$[50,000,000] in outstanding principal balance of Loans (as defined in the Prepetition Priority Credit Agreement) (the “Prepetition Priority Loans”) plus interest, fees, costs and expenses and all other Prepetition Priority Obligations under the Prepetition Priority Credit Agreement;

WHEREAS, the Prepetition Priority Obligations are secured by a security interest in substantially all of the existing and after-acquired assets of the Borrower and the Subsidiary Loan Parties (as defined in the Prepetition Priority Credit Agreement) as more fully set forth in the Prepetition Priority Loan Documents, and such security interest is perfected, and, as described in the Prepetition Priority Loan Documents subject to certain limited exceptions set forth therein, has priority over other security interests;

WHEREAS, the Borrower has requested, and, upon the terms set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured superpriority debtor-in-possession term loan credit facility of up to \$[200,000,000]<sup>1</sup> (the “DIP Facility”), consisting of: (i) a new money term loan in an aggregate principal amount not to exceed \$[150,000,000], (ii) the Roll-Up Loans and (iii) the

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<sup>1</sup> NTD: Amount to be finalized to reflect rolled up interest amount.



Transferred Loans, in each case subject to the conditions set forth herein, in the DIP Order and in the Canadian DIP Recognition Order;

WHEREAS, the proceeds of the DIP Facility shall be used to fund certain costs and expenses related to the Chapter 11 Cases and the Canadian Recognition Proceeding, and general corporate purposes and working capital requirements of the Borrower and its Subsidiaries during the pendency of the Chapter 11 Cases, in each case, pursuant to and in accordance with the Approved Budget;

WHEREAS, subject to the terms hereof, the DIP Order, and the Canadian DIP Recognition Order, the Borrower and the Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, a security interest in and lien upon substantially all of their existing and after-acquired property;

WHEREAS, the Borrower and the Guarantors' business is a mutual and collective enterprise and the Borrower and the Guarantors believe that the loans and other financial accommodations to the Borrower under this Agreement will enhance the aggregate borrowing powers of the Borrower and facilitate the administration of the Chapter 11 Cases and the Canadian Recognition Proceeding and their loan relationship with the Administrative Agent and the Lenders, all to the mutual advantage of the Borrower and the Guarantors;

WHEREAS, the Borrower and each Guarantor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in this Agreement;

WHEREAS, the Administrative Agent's and the Lenders' willingness to extend financial accommodations to the Borrower, and to administer the Borrower's and the Guarantors' collateral security therefor, on a combined basis as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Borrower and the Guarantors and at the Borrower's and the Guarantors' request and in furtherance of the Borrower's and the Guarantors' mutual and collective enterprise; and

WHEREAS, all capitalized terms used in this Agreement, including in these recitals, shall have the meanings ascribed to them in Section 1.01 below, and, for the purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Section 1.02 shall govern. All Schedules, Exhibits, Annexes, and other attachments hereto, or expressly identified in this Agreement, are incorporated by reference, and taken together with this Agreement, shall constitute a single agreement. These recitals shall be construed as part of this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

SECTION 1.01 Defined Terms. Each capitalized term used in this Agreement but not defined in this Agreement shall have the meaning assigned thereto in the DIP Order. As used in this Agreement, the following terms have the meanings specified below:

"ABR," when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.



“ABR Borrowing” means a Borrowing of an ABR Loan.

“ABR Loan” means a Loan that bears interest based on the ABR.

“Acceptable Plan” means a Plan of Reorganization that is substantially consistent with the RSA and otherwise satisfactory to the Required Lenders, containing, among other things, (i) a release in favor of the Administrative Agent and the Lenders and their respective Affiliates and their representatives, counsel and advisors, and (ii) provisions with respect to the settlement or discharge of all claims and other debts and liabilities, as such plan of reorganization may be modified, altered, amended or otherwise changed or supplemented with the prior written consent of the Required Lenders (which consent of the Required Lenders may be communicated by means of a Direction of the Required Lenders).

“Adequate Protection Liens” shall have the meaning assigned to such term in the DIP Order.

“Adequate Protection Payments” shall have the meaning assigned to such term in the DIP Order.

“Adequate Protection Superpriority Claims” shall have the meaning assigned to such term in the DIP Order.

“Account Control Agreement” means an agreement among a Loan Party, a depository bank or securities intermediary, as applicable, and the Collateral Agent, which agreement is in a form reasonably acceptable to the Collateral Agent (acting at the Direction of the Required Lenders) and which provides the Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) described therein, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time. For the avoidance of doubt, it is understood and agreed that each such account control agreement shall comprise a Loan Document and a Security Document for all purposes of the Loan Documents.

“Accounting Changes” has the meaning specified in Section 1.04(d).

“Actual Borrower Professional Fees” means with respect to any period, the amount of restructuring and professional fees expended during such period for which the Loan Parties are liable for payment (including as reimbursement to any Secured Party or the Specified Lender Advisors) that correspond to the headings “Restructuring Professional Fees” in the Approved Budget as then in effect.

“Actual Cash Receipts” shall mean with respect to any period, as the context requires, (x) the amount of actual receipts during such period of the Loan Parties (excluding any borrowings under this Agreement) under the heading “Total Receipts” in the Approved Budget and/or (y) the sum, for such period, of all such receipts for all such line items which comprise “Total Receipts” (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.

“Actual Liquidity” shall mean as of any date of determination, as the context requires, for the Loan Parties, the actual amounts of U.S. Bank Cash, amounts held in the Loan Proceeds Account and the amount of any outstanding Withdrawal Notice.

“Actual Disbursement Amounts” shall mean with respect to any period, the sum, for such period, of all such operating disbursements for all such line items which comprise “Total Operating Disbursements” and “Restructuring Disbursements” (each as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.



“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

“Administrative Agent” means Wilmington Savings Fund Society, FSB, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Administrative Agent Fee Letter” means that certain fee letter, dated June [6], 2023, by and between the Administrative Agent and the Borrower.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with the Person specified.

“Agent” means the Administrative Agent, the Collateral Agent, the Escrow Agent, and any successors and assigns in such capacity, and “Agents” means two or more of them.

“Agreement” has the meaning provided in the preamble hereto.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, respectively.

“Applicable Rate” means, with respect to the Term Loans, 8.50% for SOFR Loans and 7.50% for ABR Loans.

“Approved Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“Approved Budget” means the initial Approved Budget and each Approved Budget delivered pursuant to Sections 2.19 and/or 5.21. The initial Approved Budget is attached hereto as Exhibit S; *provided*, that, notwithstanding anything to the contrary, the Borrower shall provide an updated budget in form and substance acceptable to the Required Lenders two (2) Business Days prior to any Withdrawal from the Loan Proceeds Account.

“Approved Budget Variance Report” shall mean a report provided by the Borrower to the Administrative Agent, for prompt further delivery to the Lenders, (a) showing, in each case, on a line item by line item and cumulative basis, the Actual Cash Receipts, the Actual Disbursement Amounts, actual U.S. Bank Cash, Actual Liquidity, and Actual Borrower Professional Fees as of the last day of the prior week, and the Variance Testing Period then most recently ended, noting therein (i) all variances, on a line item by line item basis and a cumulative basis, from the Budgeted Cash Receipts, the Budgeted Disbursement Amounts, the Budgeted Liquidity and the Budgeted Borrower Professional Fees for such period as set forth in the Approved Budget as in effect for such period, (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance with such maximum variances set forth therein, and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such



violation exists, setting forth the actions which the Borrower has taken or intends to take with respect thereto, and (b) which such reports shall be certified by a Responsible Officer of the Borrower and shall be in a form, and shall contain supporting information, satisfactory to the Required Lenders in their sole discretion (it being acknowledged and agreed that the form of the variance report provided by the Borrower to the Lenders prior to the Effective Date, and as subsequently revised in accordance with good faith negotiations between the Lenders and the Borrower, shall be deemed satisfactory).

“Approved Electronic Communications” means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent and/or the Collateral Agent pursuant to any Loan Document or the transactions contemplated therein including any supplement, joinder or amendment to the Security Documents and any other written communication delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and any financial statements, financial and other report, notice, request, certificate and other information materials; *provided, however*, that solely with respect to delivery of any such communication by any Loan Party to the Administrative Agent and without limiting or otherwise affecting either the Administrative Agent’s right to effect delivery of such communication by posting such communication to the Approved Electronic Platform or the protections afforded hereby to the Administrative Agent in connection with any such posting, “Approved Electronic communication” shall exclude (i) any notice of borrowing, letter of credit request, notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article IV or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

“Approved Electronic Platform” has the meaning assigned to such term in Section 9.01.

“Approved Foreign Bank” has the meaning assigned to such term in the definition of the term “Permitted Investments.”

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any Person whose consent is required by Section 9.04), substantially in the form of Exhibit A-1 or any other form reasonably approved by the Administrative Agent.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.12(d).

“Backstop Fee” has the meaning set forth in Section 2.10(e)(i).

“Backstop Parties” shall mean each of the entities set forth on Schedule 2.10(e)(i).



“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United State Code, as amended, or any similar federal or state law for the relief of debtors.

“Basel III” means, collectively, those certain agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring,” and “Guidance for National Authorities Operating the Countercyclical Capital Buffer,” each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and as implemented by a Lender’s primary banking regulatory authority.

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (d) of Section 2.12.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points); or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market



convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to either the use or administration of Adjusted Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.12 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means a date and time determined by the Administrative Agent (at the Direction of the Required Lenders), which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof)



announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.12.

“BIA” means the Bankruptcy and Insolvency Act (Canada), as amended.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors of such Person, (c) in the case of any partnership, the board of directors or board of managers of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Board of Governors” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning provided in the preamble hereto and including any Successor Borrower.



“Borrowing” means Loans of the same Facility, Class and Type, made, converted or continued on the same date in the same currency and, in the case of SOFR Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means the lesser of \$1,000,000 and the remaining Commitments of the applicable Class.

“Borrowing Multiple” means \$1,000,000.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, in substantially the form of Exhibit B or another form which is acceptable to the Administrative Agent in its reasonable discretion.

“Budgeted Borrower Professional Fees” shall mean with respect to any period, the amount of restructuring and professional fees for such period that are set forth under the headings “Restructuring Professional Fees” in the Approved Budget, as then in effect.

“Budgeted Cash Receipts” means with respect to any period, as the context requires, (x) the line item under the heading “Forecast for Total Receipts” in the Approved Budget and/or (y) the sum, for such period, of all the amounts for all such line items which comprise “Total Receipts” (as set forth in the Approved Budget), on a cumulative basis, in each case, as determined by reference to the Approved Budget as then in effect.

“Budgeted Disbursement Amounts” means with respect to any period, as the context requires, (x) the amount that corresponds to the line items under the heading “Total Operating Disbursements” and “Restructuring Disbursements” (each as set forth in the Approved Budget) and/or (y) the sum, for such period, of all such line items which comprise “Total Operating Disbursements” and “Restructuring Disbursements” (each as set forth in the Approved Budget), in each case, as determined by reference to the Approved Budget as then in effect.

“Budgeted Liquidity” shall mean as of any date of determination, as the context requires, for the Loan Parties, the amount set forth as of such date as Actual Liquidity, in each case as determined by reference to the Approved Budget as then in effect.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that when used in connection with SOFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such SOFR Loans or any other dealings of such SOFR Loans, the term “Business Day” shall also exclude any day that is not a U.S. Government Securities Business Day.

“Canadian Bankruptcy and Insolvency Law” shall mean any federal, provincial or territorial Canadian law from time to time in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors, including the BIA, the CCAA, the Winding up and Restructuring Act (Canada), the Business Corporations Act (Alberta) and any other applicable corporations legislation.

“Canadian Bankruptcy Court” has the meaning set forth in the preamble hereto.

“Canadian Collateral Agreement” means the Senior Secured Superpriority Canadian Collateral Agreement dated as of the date hereof by and among each of the Loan Parties from time to time party thereto and the Collateral Agent.



“Canadian Confirmation Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Confirmation Order in Canada, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

“Canadian Defined Benefit Plan” shall mean a pension plan registered under the Income Tax Act (Canada), the Pension Benefits Act (Ontario) or any other applicable Canadian pension standards legislation, which contains a “defined benefit provision”, as such term is defined in subsection 147.1(1) of the Income Tax Act (Canada).

“Canadian DIP Recognition Order” shall mean the Canadian Supplemental Order, unless the Canadian Final Order shall have been entered, in which case it means the Canadian Final Order.

“Canadian Dollars” and “C\$” mean the lawful currency of Canada.

“Canadian Final Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Final Order in Canada and providing for a super priority charge over the Collateral located in Canada, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

“Canadian Guarantors” means any Subsidiary that is organized under the laws of Canada (or any province thereof).

“Canadian Interim Orders” shall mean, collectively, the Canadian Recognition Order and the Canadian Supplemental Order.

“Canadian Recognition Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing the Chapter 11 Cases as “foreign main proceedings” under Part IV of the CCAA, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).

“Canadian Recognition Proceeding” has the meaning set forth in the preamble hereto.

“Canadian Supplemental Order” shall mean an order of the Canadian Bankruptcy Court, among other things, recognizing and giving full force and effect to the Interim Order in Canada, providing for a super priority charge over the Collateral located in Canada, granting a stay of proceedings in respect of the Canadian Guarantors and granting certain customary additional relief in the Canadian Recognition Proceeding, which order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole and absolute discretion (as such order may be amended, modified or extended in a manner satisfactory to the Administrative Agent and the Required Lenders) (which satisfaction of the Required Lenders may be communicated in each case via an email from either of the Specified Lender Advisors).



“Capital Lease Obligation” means an obligation that is a Capitalized Lease; and the amount of Indebtedness represented thereby at any time shall be the amount of the liability in respect thereof that would at that time be required to be capitalized on a balance sheet in accordance with GAAP as in effect on the Effective Date.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP as in effect on the Effective Date, recorded as capitalized leases.

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and the Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

“Carve-Out” shall have the meaning set forth for the defined term “Carve Out” in the DIP Order.

[“Cash Collateral” shall have the meaning assigned to such term in the DIP Order.]

“Cash Management Order” shall mean any interim or final order authorizing and approving 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 [Docket No. [ \_ ]].

“Cash Management Obligations” means (a) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services or any automated clearing house transfers of funds and (b) other obligations in respect of netting services, employee credit or purchase card programs and similar arrangements.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“CCAA” means the Companies’ Creditors Arrangement Act (Canada), R.S.C 1985, c. C-36.

“CCAA Administration Charge” means the “Administration Charge” as defined in the Canadian Supplemental Order, in an amount not to exceed CAD\$400,000.

“CCAA Filing Date” shall mean the date on which an application to commence the Canadian Recognition Proceeding is made to the Canadian Bankruptcy Court.

“Change of Control” means (a) the failure of Holdings prior to an IPO, or, after an IPO, the IPO Entity, to own directly or indirectly through wholly-owned Subsidiaries that are Guarantors, all of the Equity Interests in the Borrower, (b) prior to an IPO, the failure by the Permitted Holders to own, directly or indirectly through one or more holding company parents of Holdings, beneficially and of record, Equity Interests in Holdings representing at least a majority of the aggregate ordinary voting power for the election of the Board of Directors of Holdings represented by the issued and outstanding Equity Interests in Holdings, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings, (c) after an IPO, the acquisition of ownership, directly or



indirectly, beneficially or of record, by any Person or group, other than the Permitted Holders (directly or indirectly, including through one or more holding companies), of Equity Interests representing 40% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the IPO Entity and the percentage of the aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests in the IPO Entity held by the Permitted Holders, unless the Permitted Holders (directly or indirectly, including through one of more holding companies) otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint (and do so designate, nominate or appoint) a majority of the Board of Directors of Holdings or the IPO Entity or (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the documentation governing the Prepetition Priority Credit Agreement, the Prepetition Existing Credit Agreement or any other Material Indebtedness that is Subordinated Indebtedness. For purposes of this definition, (i) “beneficial ownership” shall be as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, (ii) the phrase Person or “group” is within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or “group” and its subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (iii) if any Person or “group” includes one or more Permitted Holders, the issued and outstanding Equity Interests of Holdings, the IPO Entity or the Borrower, as applicable, directly or indirectly owned by the Permitted Holders that are part of such Person or “group” shall not be treated as being owned by such Person or “group” for purposes of determining whether clause (c) of this definition is triggered.

“Change in Law” means (a) the adoption of any rule, regulation, treaty or other law after the date of this Agreement, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (i) any requests, rules, guidelines or directives under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or issued in connection therewith and (ii) any requests, rules, guidelines or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case shall be deemed to be a “Change in Law,” regardless of when enacted, adopted, promulgated or issued.

“Chapter 11 Cases” shall have the meaning assigned to such term in the recitals of this Agreement.

“Class” when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Loans under a specific Facility, (b) any Commitment, refers to whether such Commitment is a Commitment under a specific Facility and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Upon funding of the Initial Term Loans on the Effective Date, there shall only be one Class of Term Loans that shall be deemed to include Initial Term Loans, the Roll-Up Loans and Transferred Loans.

Any Term Loans that have different terms and conditions from shall be construed to be in different Classes.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning assigned to the term “DIP Collateral” in the DIP Order.



“Collateral Agent” means Wilmington Savings Fund Society, FSB, in its capacity as administrative agent hereunder and under the other Loan Documents, and its successors in such capacity as provided in Article VIII.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

- (a) the Obligations shall have been secured by a perfected security interest in the Collateral with the priority required by the DIP Order and the Canadian DIP Recognition Order (subject in all respects to the Carve Out, the CCAA Administration Charge and the Superpriority Liens (as defined in the Receivables Order, as applicable) through the provisions of the DIP Order or the Canadian DIP Recognition Order, to the extent such security interest may be perfected by virtue of the DIP Order, the Canadian DIP Recognition Order or by filings of Uniform Commercial Code or PPSA financing statements or any other method of perfection referred to in this definition;
- (b) the Administrative Agent shall have received from (i) Holdings, each Intermediate Parent, the Borrower, each Domestic Subsidiary and each Foreign Guarantor (other than an Excluded Subsidiary) either (x) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes a Loan Party after the Effective Date (including by ceasing to be an Excluded Subsidiary), a supplement to the Guarantee Agreement, in the form specified therein, duly executed and delivered on behalf of such Person, (ii) the English Guarantors either (x) a counterpart of the Debenture Agreement duly executed and delivered on behalf of such Person or (y) in the case of any Person that becomes an English Guarantor after the Effective Date (including by ceasing to be an Excluded Subsidiary), a Security Accession Deed as defined in the Debenture Agreement, (iii) with respect to each Foreign Guarantor, such other Security Documents, including, but not limited to, the Canadian Collateral Agreement and the Deed of Hypothec, reasonably requested by the Required Lenders (which request may be communicated by a Direction of the Required Lenders) and (iv) Holdings, the Borrower and each Subsidiary Loan Party Account Control Agreements with respect to each deposit account and securities account (in each case, other than any Excluded Account), duly executed and delivered on behalf of such Person, in each case under this clause (a) together with, in the case of any such Loan Documents executed and delivered after the Effective Date, documents and, to the extent reasonably requested by the Administrative Agent, opinions and certificates of the type referred to in Section 4.01(b) and 4.01(c);
- (c) all outstanding Equity Interests of the English Guarantors owned by or on behalf of any Loan Party shall have been charged pursuant to the Debenture Agreement (and the Administrative Agent shall have received certificates or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank);
- (d) if any Indebtedness for borrowed money of Holdings, any Intermediate Parent, the Borrower or any Subsidiary in a principal amount of \$2,000,000 or more individually is owing by such obligor to any Loan Party, such Indebtedness shall be evidenced by a promissory note, such promissory note shall have been pledged pursuant to the DIP Order or the Debenture Agreement (as applicable) and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;
- (e) all certificates, agreements, documents and instruments, including Uniform Commercial Code financing statements, required by the Security Documents, Requirements of Law or reasonably requested by the Required Lenders (which can be communicated by a Direction of the Required Lenders) to be filed, delivered, registered or recorded to create the Liens intended to be created by



the Security Documents and perfect such Liens to the extent required by, and with the priority required by, the Security Documents and the other provisions of the term “Collateral and Guarantee Requirement,” shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording;

- (f) if requested by the Required Lenders (which can be communicated by a Direction of the Required Lenders), the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Material Real Property duly executed and delivered by the record owner of such Mortgaged Property, (ii) with respect to each Mortgage, (w) a policy of title insurance (or marked unconditional commitment to issue such policy) in the amount equal to not less than 100% of the Fair Market Value of the Mortgaged Property covered thereby, including fixtures, as reasonably determined by the Borrower and agreed to by the Administrative Agent, issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent insuring the Lien of each such Mortgage as a first priority Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements (other than a creditor’s rights endorsement), coinsurance and reinsurance as the Administrative Agent may reasonably request to the extent available in the applicable jurisdiction at commercially reasonable rates, (x) such affidavits, instruments of indemnification (including a so-called “gap” indemnification) as are customarily requested by the title company to induce the title company to issue the title policies and endorsements contemplated above, (y) evidence reasonably acceptable to the Collateral Agent of payment by the Borrower (or evidence that the same will be paid out of Loan proceeds) of all title policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the title policies referred to above, (iii) a survey of such Mortgaged Property in such form as shall be required by the title company to issue the so-called comprehensive and other survey-related endorsements and to remove the standard survey exceptions from the title policies and endorsements contemplated above (*provided, however*, that a survey shall not be required to the extent that the issuer of the applicable title insurance policy provides reasonable and customary survey-related coverages (including, without limitation, survey-related endorsements) in the applicable title insurance policy based on an existing survey and/or such other documentation as may be reasonably satisfactory to the title insurer), (iv) a completed “life of loan” FEMA flood determination and notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each applicable Loan Party, (v) if the improvements located on such Mortgaged Property is located in an area determined by FEMA to have special flood hazards, evidence of such flood insurance as may be required under applicable law, including Regulation H of the Board of Governors and the other Flood Insurance Laws and as required under Section 5.07, and (vi) a customary legal opinion from appropriate counsel practicing in the jurisdiction in which the real property covered by such Mortgage is located.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (i) the foregoing provisions of this definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance, legal opinions or other deliverables with respect to, particular assets of the Loan Parties, or the provision of Guarantees by any Subsidiary, if, and for so long as and to the extent that the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree in writing that the cost of creating or perfecting such pledges or security interests in such assets, or obtaining such title insurance, legal opinions or other deliverables in respect of such assets, or providing such Guarantees (taking into account any material adverse Tax consequences (including the imposition of withholding or other material Taxes)), shall be excessive in view of the benefits to be obtained by the Lenders therefrom (or the relevant assets or actions



shall be limited in a manner reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower in order to reduce such cost), (ii) Liens required to be granted from time to time pursuant to the term “Collateral and Guarantee Requirement” shall be subject to applicable exceptions and limitations set forth in the Security Documents, if any, (iii) other than set forth in Section 5.19, in no event shall control agreements or other control or similar arrangements be required with respect to deposit accounts, securities accounts, commodities accounts or other assets specifically requiring perfection by control agreements, (iv) no perfection actions shall be required with respect to Vehicles and other assets subject to certificates of title (other than the filing of UCC financing statements), (v) no perfection actions shall be required with respect to commercial tort claims with a value less than \$1,000,000 individually (other than the filing of UCC financing statements), and no perfection shall be required with respect to promissory notes evidencing debt for borrowed money in a principal amount of less than \$1,000,000 individually (other than the filing of UCC financing statements), (vi) except with respect to any Foreign Guarantors, no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required to be taken to create any security interests in assets located or titled outside of the United States or to perfect or make enforceable any security interests in any such assets and (vii) except with respect to any Foreign Guarantors, no actions shall be required to perfect a security interest in letter of credit rights (other than the filing of UCC financing statements). The Administrative Agent (acting at the Direction of the Required Lenders) may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any Guarantee by any Subsidiary (including extensions beyond the Effective Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Effective Date).

“Commitment” means with respect to any Lender, the commitment of such Lender to make Term Loans pursuant to Section 2.01, as set forth on Schedule 2.01, which Schedule 2.01 will be modified upon completion of the Primary Syndication.

“Commitment Fee” has the meaning set forth in Section 2.10(e)(iii).

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company Materials” has the meaning specified in Section 5.01.

“Consolidated Total Debt” means, as of any date of determination (i) the outstanding principal amount of all third party Indebtedness for borrowed money (including purchase money Indebtedness), unreimbursed drawings under letters of credit, Capital Lease Obligations, third party Indebtedness obligations evidenced by notes or similar instruments, and, without duplication, Receivables Guarantees, in each case of the Borrower and the Restricted Subsidiaries on such date, on a consolidated basis and determined in accordance with GAAP (excluding, in any event, the effects of any discounting of Indebtedness resulting from the application of acquisition method accounting in connection with the Transactions) minus (ii) the aggregate amount of cash and Permitted Investments on the consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date to the extent the use thereof for the application to the payment of Indebtedness is not prohibited by law or any contract to which the Borrower and any Restricted Subsidiary is a party. It is understood that to the extent the Borrower or any Restricted Subsidiary incurs any Indebtedness and receives the proceeds of such Indebtedness, for purposes of determining any incurrence test under this Agreement and whether the Borrower is in Pro Forma Compliance with any such test, the proceeds of such incurrence shall not be “netted” pursuant to clause (ii) of this definition.



“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise.

“Controlling” and “Controlled” have meanings correlative thereto.

“Copyright License” means any written agreement, now or hereafter in effect, granting to any Person any right under any Copyright now or hereafter owned by any other Person or that such other Person otherwise has the right to license, and all rights of any such Person under any such agreement.

“Copyrights” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all copyright rights in any work arising under the copyright laws of the United States or any other jurisdiction or territory, whether as author, assignee, transferee or otherwise; (b) all registrations and applications for registration of any such copyright in the United States or any other jurisdiction or territory, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office (or any similar office in any other jurisdiction or territory); (c) all renewals of any of the foregoing; and (d) all rights to sue for past, present and future infringements of any of the foregoing.

“Credit Event” shall have the meaning assigned to such term in Section 4.03.

“CRO” has the meaning assigned to such term in Section 5.23(a).

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Debenture Agreement” means the Debenture Agreement by and among the English Guarantors and the Collateral Agent.

“Debtor” shall have the meaning assigned to such term in the recitals of this Agreement.

“Deed of Hypothec” means the deed of hypothec to be entered into by and among Cyxtera Communications Canada, ULC and the Collateral Agent, as hypothecary representative for the benefit of the Secured Parties.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Term Loans within one Business Day of the date on which such funding is required hereunder, (b) notified the Borrower, the Administrative Agent or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement or provided any written notification to any Person to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent (whether acting on its own behalf or at the reasonable request of the Borrower (it being understood that the Administrative Agent shall comply with any such reasonable request)), to confirm that it will comply with the terms of this Agreement relating to its obligations to fund



prospective Loans, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, unless the subject of a good faith dispute or subsequently cured, or (e)(i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding or any action or proceeding of the type described in Section 7.01(h) or (i), or has had a receiver, receiver and manager, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, receiver and manager, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) has become the subject of a Bail-In Action.

“DIP Facility” shall have the meaning assigned to such term in the recitals of this Agreement.

“DIP Order” shall mean the Interim Order, and upon its entry, the Final Order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order is in effect and not vacated or stayed, together with all extensions, modifications and amendments thereto which are satisfactory to the Required Lenders, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guarantee) the Obligations, and grant Liens under this Agreement and the other Loan Documents, as the case may be, provides for the superpriority of the Administrative Agent’s and the Lenders’ claims and authorizes the use of Cash Collateral.

“Discharge of DIP Obligations” shall mean the occurrence of (a) all Commitments shall have been terminated and (b) the principal of and interest on each Loan and all other Obligations shall have been paid in full in cash (other than in respect of contingent indemnification and expense reimbursement claims not then due).

“Disclosure Statement” shall mean the related disclosure statement (and all exhibits thereto) with respect to the Acceptable Plan, which shall be reasonably satisfactory to the Required Lenders.

“Direction of the Required Lenders” means a written direction or instruction from Lenders constituting the Required Lenders which may be in the form of an email or other form of written communication and which may come from any Specified Lender Advisor. Any such email or other communication from a Specified Lender Advisor shall be conclusively presumed to have been authorized by a written direction or instruction from the Required Lenders and such Specified Lender Advisor shall be conclusively presumed to have acted on behalf of and at the written direction or instruction from the Required Lenders (and the Agents shall be entitled to rely on such presumption). For the avoidance of doubt, with respect to each reference herein to (i) documents, agreements or other matters being “satisfactory,” “acceptable,” “reasonably satisfactory” or “reasonably acceptable” (or any expression of similar import) to the Required Lenders, such determination may be communicated by a Direction of the Required Lenders as contemplated above and/or (ii) any matter requiring the consent or approval of, or a determination by, the Required Lenders, such consent, approval or determination may be communicated by a Direction of the Required Lenders as contemplated above. The Agents shall be entitled to rely upon, and shall not incur any liability for relying upon, any purported Direction of the Required Lenders, and the Agents shall not have any responsibility to independently determine whether such direction has in fact been authorized by the Required Lenders.



“Disposition” has the meaning assigned to such term in Section 6.05.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest in such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof), or upon the happening of any event or condition:

- (a) matures or is mandatorily redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), whether pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable, either mandatorily or at the option of the holder thereof, for Indebtedness or Equity Interests (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or
- (c) is redeemable (other than solely for Equity Interests in such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests) or is required to be repurchased by such Person or any of its Affiliates, in whole or in part, at the option of the holder thereof;

in each case, on or prior to the date 91 days after the Latest Maturity Date; *provided, however*, that (i) an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an “asset sale,” a “change of control” or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after repayment in full of all the Loans and all other Obligations that are accrued and payable and the termination of the Commitments and (ii) if an Equity Interest in any Person is issued pursuant to any plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), any Intermediate Parent, the Borrower or any of the Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by Holdings (or any direct or indirect parent company thereof), the Borrower or any of the Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person.

“Disqualified Lenders” means (a) those Persons identified by Holdings to the Specified Lender Advisors in writing prior to the Effective Date, (b) those Persons who are competitors of the Borrower and its Subsidiaries identified by Holdings to the Administrative Agent from time to time in writing (including by email) and (c) in the case of each Persons identified pursuant to clauses (a) and (b) above, any of their Affiliates that are either (i) identified in writing by Holdings from time to time or (ii) clearly identifiable as Affiliates on the basis of such Affiliate’s name (other than, in the case of this clause (c), Affiliates that are bona fide debt funds); *provided*, that no designation of any Person as a Disqualified Lender shall retroactively disqualify any assignments or participations made to, or information provided to, such Person before it was designated as a Disqualified Lender, and such Person shall not be deemed to be a Disqualified Lender in respect of any assignments or participations made to such Person prior to the date of such designation.

“Dollar Amount” means, at any time with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding (or in which such participation is held).

“Dollars” or “\$” refers to lawful money of the United States of America.



“Domain Name” means all Internet domain names and associated URL addresses in or to which any such Person now or hereafter has any right, title or interest.

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Effective Date Direct Borrowing” means proceeds of the Initial Term Loans of \$[40,000,000], less the amount of applicable fees and expenses, representing the portion of Initial Term Loans to be made on the Effective Date that shall be funded to an account of the Borrower pursuant to the Flow of Funds Statement on the Effective Date (rather than being deposited into the Loan Proceeds Account).

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person, other than, in each case, (i) a natural person, (ii) a Defaulting Lender, (iii) a Disqualified Lender to the extent a list of Disqualified Lenders has been made available to all Lenders or (iv) Holdings, the Borrower or any of their respective Subsidiaries and Affiliates.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“English Guarantors” means any Subsidiary that is incorporated under the laws of England and Wales.

“Environmental Laws” means applicable common law and all applicable treaties, rules, regulations, codes, ordinances, judgments, orders, decrees and other applicable Requirements of Law, and all applicable injunctions or binding agreements issued, promulgated or entered into by or with any Governmental Authority, in each instance relating to the protection of the environment, including with respect to the preservation or reclamation of natural resources or the Release or threatened Release of any Hazardous Material, or to the extent relating to exposure to Hazardous Materials, the protection of human health or safety.

“Environmental Liability” means any liability, obligation, loss, claim, action, order or cost, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties and indemnities), of Holdings, any Intermediate Parent, the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or



permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 or Section 430 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) a determination that any Plan is, or is expected to be, in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) the incurrence by a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by a Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (g) the incurrence by a Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan (including any liability under Section 4062(e) of ERISA) or Multiemployer Plan; or (h) the receipt by a Loan Party or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, “insolvent” within the meaning of Section 4245 of ERISA or in “endangered” or “critical status”, within the meaning of Section 432 of the Code or Section 305 of ERISA.

“Escrow Agent” means the Escrow Agent under the Escrow Agreement, which shall initially be The Bank of New York Mellon, a New York banking corporation.

“Escrow Agreement” means the Escrow Agreement, dated as of the Effective Date (as amended, restated, supplemented or otherwise modified from time to time), among the Borrower, the Escrow Agent and the Administrative Agent for and on behalf of the Lenders relating to the Loan Proceeds Account.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“euro” means the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the EMU Legislation.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended from time to time.



“Excluded Accounts” means deposit accounts or securities accounts (a) the funds in which consist of (i) funds held by the Borrower or any Subsidiary in trust for any director, officer or employee of the Borrower or any Subsidiary or any employee benefit plan maintained by the Borrower or any Subsidiary or (ii) funds representing deferred compensation for the directors and employees of the Borrower and the Subsidiaries, (b) used by the Loan Parties exclusively for disbursements and payments (including payroll) in the ordinary course of business, (c) that are zero balance accounts and (e) that are used exclusively for any Permitted Receivables Financing.

“Excluded Assets” means (a) any assets (excluding the proceeds therefrom) to the extent that and for so long as the grant of a Lien thereon to secure the Secured Obligations is prohibited by any Requirements of Law (other than to the extent that any such prohibition would be rendered ineffective pursuant to any other applicable Requirements of Law), but excluding any prohibition that is ineffective under the Uniform Commercial Code of any applicable jurisdiction or the Bankruptcy Code, (b) (x) receivables and related assets (or interests therein) (A) sold to any Receivables Subsidiary, (B) otherwise pledged, factored, transferred or sold in connection with any Permitted Receivables Financing and (C) intercompany notes owed by a Receivables Subsidiary to a Restricted Subsidiary in connection with purchase of receivables and receivables assets and (y) the Equity Interests of any Receivables Subsidiary, (c) in relation to any non-U.S. Loan Party, any assets of, held by or relating to, such non-U.S. Loan Party, defined or described as “excluded assets” in any Security Document to the extent the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree and (d) any other asset to the extent the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower reasonably agree that the cost, burden, difficulty or other consequences (including any material adverse Tax consequences) of obtaining a security interest in such asset or perfection thereof is excessive in relation to the benefit to the Lenders of the security to be afforded thereby (the relevant assets shall be limited in a manner reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower in order to reduce such cost, burden, difficulty or other consequences)).

“Excluded Subsidiary” means (a) [reserved], (b) each Subsidiary listed on Schedule 1.01(a), (c) [reserved], (d) [reserved], (e) any Subsidiary that is prohibited by (i) applicable Requirements of Law or (ii) any contractual obligation existing on the Effective Date or on the date any such Subsidiary is acquired (so long in respect of any such contractual prohibition such prohibition is not incurred in contemplation of such acquisition), in each case from guaranteeing the Secured Obligations (but only for so long as such restriction is continuing) or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee, or for which the provision of a Guarantee would result in a material adverse Tax consequence (including as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction) to the Borrower, its Subsidiaries or their Affiliates as reasonably agreed by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower, (f) any Foreign Subsidiary (other than any Foreign Guarantors), (g) any FSHCO (other than any Foreign Guarantors), (h) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary or FSHCO (other than any Foreign Guarantors), (i) any other Subsidiary excused from becoming a Loan Party pursuant to clause (f)(i) of the definition of the term “Collateral and Guarantee Requirement,” (j) each Receivables Subsidiary, (k) any not-for-profit Subsidiaries, captive insurance companies or other special purpose subsidiaries designated by the Borrower from time to time, (l) [reserved] and (m) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders), the cost, burden, difficulty or other consequences (including any materially adverse Tax consequences) of providing a guarantee of the Secured Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom.

“Excluded Swap Obligation” means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any Guarantee thereof) is or



becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any applicable keep well, support, or other agreement for the benefit of such Guarantor and any and all Guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Guarantor as specified in any agreement between the relevant Loan Parties and counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a Master Agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (a) Taxes imposed on (or measured by) net income or profits (however denominated), branch profits Taxes, and franchise Taxes, in each case imposed by (i) a jurisdiction as a result of such recipient being organized or having its principal office located in or, in the case of any Lender, having its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) any jurisdiction as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than a connection arising solely from such recipient having executed, delivered, or become a party to, performed its obligations or received payments under, received or perfected a security interest under, sold or assigned an interest in, engaged in any other transaction pursuant to, or enforced, any Loan or Loan Document), (b) any withholding Tax that is attributable to a Lender's failure to comply with Section 2.15(e), (c) any U.S. federal withholding Taxes imposed due to a Requirement of Law in effect at the time (i) a Lender becomes a party hereto (other than pursuant to an assignment request by the Borrower under Section 2.17) or (ii) a Lender designates a new lending office, except in each case to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding Tax under Section 2.15(a) and (d) any Tax imposed pursuant to FATCA.

"Existing Escrow Agreement" has the meaning assigned to such term in Section 2.01(b).

"Facility" means the DIP Facility.

"Fair Market Value" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset.

"FATCA" means Sections 1471 through 1474 of the Code as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official administrative interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code and any law, regulation, rule, promulgation or official agreement implementing an official governmental agreement or intergovernmental agreement with respect to the foregoing.



“FCPA” has the meaning assigned to such term in Section 3.18(b).

“Federal Funds Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States.

“FEMA” means the U.S. Federal Emergency Management Agency.

“Final Order” means the Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Related Relief, which shall be in form and substance satisfactory to the Required Lenders.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“First Testing Period” means the four week period ending on June [16], 2023.

“Floor” means a rate of interest equal to 1.00% *per annum*.

“Flow of Funds Statement” means a flow of funds statement relating to payments to be made and credited by all of the parties on the Effective Date (including wire instructions therefor), as prepared by the Borrower and its financial advisor in consultation with (and approved by) the Administrative Agent and the Required Lenders.

“Forbearance Agreement” means the Forbearance Agreement substantially in the form of Exhibit T by and among, inter alia, the Borrower, Initial Holdings, and Citibank, N.A., as administrative agent and collateral agent for the lenders under the Prepetition Existing Credit Agreement.

“Foreign Guarantors” means (i) the English Guarantors and (ii) the Canadian Guarantors.

“Foreign Pension Plan” shall mean any employee benefit plan sponsored, maintained or contributed to by any Loan Party or any of its Subsidiaries or Foreign Subsidiaries that, under Requirements of Law (other than the laws of the United States or any political subdivision thereof) is required to be funded through a trust or other funding vehicle, other than a trust or other funding vehicle maintained exclusively by a Governmental Authority.

“Foreign Plan Event” shall mean, (i) the receipt of notice of intent by a Governmental Authority to terminate or to appoint a trustee or similar official to administer a Foreign Pension Plan or alleging the insolvency of a Foreign Pension Plan, (ii) the incurrence of liability by any Loan Party or any of its Subsidiaries or Foreign Subsidiaries under applicable law on account of the complete or partial termination of a Foreign Pension Plan, (iii) the occurrence of any transaction with respect a Foreign Pension Plan that is prohibited under any applicable law or (iv) the imposition on any Loan Party or any of its Subsidiaries or Foreign Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any law applicable to a Foreign Pension Plan.



“Foreign Prepayment Event” has the meaning assigned to such term in Section 2.09(f).

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“FSHCO” means any direct or indirect Domestic Subsidiary of Holdings (other than the Borrower) that has no material assets other than Equity Interests (or Equity Interests and Indebtedness) in one or more Foreign Subsidiaries (other than any Foreign Guarantors) or other FSHCOs.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funded Debt” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of the Borrower or the Restricted Subsidiaries, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (a) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB Accounting Standards Codification 825-Financial Instruments, or any successor thereto (including pursuant to the FASB Accounting Standards Codification), to value any Indebtedness of the Borrower or any subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capital Lease Obligations shall be determined in accordance with the definition of “Capital Lease Obligations.”

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning assigned to such term in Section 9.04(e). “Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other



financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined in good faith by a Financial Officer. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee Agreement” means the Guarantee Agreement by and among the Loan Parties and the Administrative Agent, substantially in the form of Exhibit C.

“Guarantors” means, collectively, (i) with respect to the Secured Obligations of the Borrower, each of Holdings, the Intermediate Parents and the Subsidiary Loan Parties and (ii) with respect to the Secured Obligations of any of Holdings, the Intermediate Parents and the Subsidiary Loan Parties, the Borrower.

“Hazardous Materials” means all explosive, radioactive, hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum by-products or distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated as hazardous or toxic, or any other term of similar import, pursuant to any Environmental Law.

“Historical Financial Statements” means the audited consolidated balance sheet and audited consolidated statements of operations, comprehensive income (loss), changes in shareholders’ equity and cash flows of Cyxtera Technologies, Inc. as of the end of and for such fiscal year, and related notes thereto.

“Holdings” means (a) prior to any IPO, Initial Holdings and (b) on and after an IPO, (i) if the IPO Entity is Initial Holdings or any Person of which Initial Holdings is a subsidiary, Initial Holdings or (ii) if the IPO Entity is a subsidiary of Initial Holdings that is an Intermediate Parent, the IPO Entity.

“IFRS” means international accounting standards as promulgated by the International Accounting Standards Board.

“Immediate Family Members” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Impacted Loans” has the meaning assigned to such term in Section 2.12(a)(ii).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred and unpaid purchase price of property or services (excluding trade accounts payable in the ordinary course of business and any earn-out obligation until such obligation becomes a liability on the balance sheet of



such Person in accordance with GAAP and if not paid within 60 days after being due and payable), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others (other than by endorsement of negotiable instruments for collection in the ordinary course of business), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; *provided* that the term "Indebtedness" shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller, (iii) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, (iv) Indebtedness of any Parent Entity appearing on the balance sheet of the Borrower solely by reason of push down accounting under GAAP, (v) accrued expenses and royalties and (vi) asset retirement obligations and obligations in respect of reclamation and workers' compensation (including pensions and retiree medical care) that are not overdue by more than 60 days. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith. For all purposes hereof, the Indebtedness of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax, and accounting operations and intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business.

"Indemnified Taxes" means all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"Indemnatee" has the meaning assigned to such term in Section 9.03(b).

"Information" has the meaning assigned to such term in Section 9.12(a).

"Initial Budget" shall have the meaning assigned to such term in Section 3.20(d).

"Initial Holdings" has the meaning assigned to such term in the preamble hereto.

"Initial Term Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make an Initial Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Initial Term Loan to be made by such Term Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Term Lender pursuant to an Assignment and Assumption. The initial amount of each Term Lender's Initial Term Commitment is set forth on Schedule 2.01(b) or in the Assignment and Assumption pursuant to which such Term Lender shall have assumed its Initial Term Commitment, as the case may be. As of the Effective Date, the total Initial Term Commitment is \$150,000,000.

"Initial Term Loans" means Loans made pursuant to Section 2.01(a).



“Intellectual Property” means, with respect to any Person, (a) all intellectual property and similar property of every kind and nature now owned or hereafter acquired by such Person, whether registered or unregistered, including inventions, designs, Patents, Trademarks, Copyrights, Licenses, Trade Secrets, Domain Names, and any intellectual property rights in confidential or proprietary technical and business information, know-how, show-how or other data or information, Software and databases, (b) any and all other IP Rights throughout the world, together with (i) all registrations, extensions, supplements, applications and renewals of such IP Rights, (ii) the right to sue for past, present and future infringements or other violations of such IP Rights; and (iii) all rights corresponding thereto.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.05.

“Interest Payment Date” means, subject to Section 2.10(c), (a) with respect to any ABR Loan, the last day of each calendar month of March, June, September and December and (b) with respect to any SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a SOFR Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means, with respect to any SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (or, if agreed to by each Lender participating therein, twelve months or such other period less than twelve months or such other period less than one month, in each case as the Borrower may elect), *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) that in the event the Borrower elects an Interest Period of less than one month, the interest rate in respect of the applicable SOFR Borrowing shall be determined through the use of straight-line interpolation by reference to two such rates, one of which shall be determined as if the length of the period of such deposits were the period of time for which the rate for such deposits are available is the period next shorter than the length of such Interest Period and the other of which shall be determined as if the period of time for which the rate for such deposits are available is the period next longer than the length of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Order” means the Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay (VI) Scheduling a Final Hearing and (II) Related Relief, in form and substance satisfactory to the Required Lenders.

“Intermediate Parent” means any subsidiary of Holdings of which the Borrower is a subsidiary.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or Indebtedness or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other Indebtedness or equity participation or interest in, another Person including any partnership or joint venture interest in such other Person,



(excluding, in the case of the Borrower and the Restricted Subsidiaries, intercompany loans, advances, or Indebtedness having a term not exceeding 364 days (inclusive of any rollover or extensions of terms) and made in the ordinary course of business) or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. The amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any cash payments actually received by such investor representing interest in respect of such Investment (to the extent any such payment to be deducted does not exceed the remaining principal amount of such Investment), but without any adjustment for write-downs or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof, as determined in good faith by a Financial Officer, (iii) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the Fair Market Value of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return of capital of, or dividends or other distributions in respect of, such Investment (to the extent such payments do not exceed, in the aggregate, the original amount of such Investment), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment, and (iv) any Investment (other than any Investment referred to in clause (i), (ii) or (iii) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of Indebtedness or other securities of any other Person shall be the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus (A) the cost of all additions thereto and minus (B) the amount of any portion of such Investment that has been repaid to the investor in cash as a repayment of principal or a return of capital, and of any cash payments actually received by such investor representing interest, dividends or other distributions in respect of such Investment (to the extent the amounts referred to in clause (B) do not, in the aggregate, exceed the original cost of such Investment plus the costs of additions thereto), but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.04, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; *provided* that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by a Financial Officer.

“Investor” means a holder of Equity Interests in Holdings (or any direct or indirect parent thereof) on the Effective Date.

“IP Rights” all rights in Patents, Trademarks, Copyrights, trade secrets, know-how and any and all other Intellectual Property.

“IPO” means the initial underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) of common Equity Interests in the IPO Entity.

“IPO Entity” means, at any time at and after an IPO, Initial Holdings, a parent entity of Initial Holdings, or an Intermediate Parent, as the case may be, the Equity Interests in which were issued or otherwise sold pursuant to the IPO; *provided* that, immediately following the IPO, the Borrower is a wholly-owned subsidiary of such IPO Entity and such IPO Entity owns, directly or through its subsidiaries, substantially all the businesses and assets owned or conducted, directly or indirectly, by the Borrower immediately prior to the IPO.



“IRS” means the United States Internal Revenue Service.

“Junior Financing” means any Material Indebtedness (other than any permitted intercompany Indebtedness owing to Holdings, the Borrower or any Restricted Subsidiary) that is (a) subordinated in right of payment to the Obligations, (b) secured on a junior basis to the Liens securing the Secured Obligations or (c) unsecured.

“KPI Report” has the meaning specified in Section 5.21(a).

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Term Loan or Term Commitment hereunder at such time, including the latest maturity or expiration date of the Term Loans, or Other Term Loan, in each case as extended in accordance with this Agreement from time to time.

“Lenders” means (a) the Term Lenders and (b) any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, in each case other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“License” means any Patent License, Trademark License, Copyright License or other license or sublicense agreement to which any Person is a party, together with any and all renewals, extensions, supplements and continuations thereof.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan Documents” means this Agreement, the Administrative Agent Fee Letter, the Escrow Agreement, the Guarantee Agreement, the Security Documents and, except for purposes of Section 9.02, any promissory notes delivered pursuant to Section 2.07(f).

“Loan Parties” means Holdings, each Intermediate Parent, the Borrower and the Subsidiary Loan Parties.

“Loan Proceeds Account” shall mean an escrow account with the Escrow Agent into which the proceeds of the Loans (other than the Effective Date Direct Borrowing) shall be deposited and retained subject to withdrawal thereof by the Borrower (each such event, a “Withdrawal”) pursuant to a Withdrawal Notice for use in accordance with the terms hereof and of the Approved Budget or return thereof to the Lenders upon the occurrence of the Maturity Date for any reason whatsoever.

“Loans” means the Term Loans.

“Management Investors” means the directors and officers and employees of Holdings, any Intermediate Parents, the Borrower and/or any of their respective subsidiaries who are (directly or indirectly through one or more investment vehicles) Investors.

“Master Agreement” has the meaning assigned to such term in the definition of “Swap Agreement.”

“Material Adverse Effect” means any event, circumstance or condition that has had, or could reasonably be expected to have, a material and adverse effect on (a) the business or condition (financial or otherwise), performance, properties, contingent liabilities, material agreements or prospects of the



Borrower and the Restricted Subsidiaries, taken as a whole (excluding (i) any matters publicly disclosed in writing or disclosed to the Administrative Agent and the Lenders in writing prior to the filing of the Chapter 11 Cases, (ii) any matters disclosed in any first day pleadings or declarations filed in the Chapter 11 Cases and (iii) the filing of the Chapter 11 Cases, the events and conditions related and/or leading up thereto as disclosed in such declaration and the effects thereof or resulting from such events, commencement, continuation and prosecution and any action required to be taken under the Loan Documents or under the DIP Orders), (b) the ability of the Borrower and the Guarantors, taken as a whole, to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Obligations), or obligations in respect of one or more Swap Agreements, of any one or more of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries in an aggregate principal amount exceeding \$2,500,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings, the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Intellectual Property” means any patents, trademarks, copyrights, and all other intellectual property that, individually or in the aggregate, are material to the operation of the business of the Borrower and its Subsidiaries, taken as a whole.

“Material Intellectual Property Provision” means, notwithstanding anything else in this Agreement or the other Loan Documents to the contrary (a) no Investment or Disposition of Material Intellectual Property may be made from Holdings, the Borrower or any Loan Party, in each case, to any Subsidiary that is not a Loan Party and (b) no Subsidiary that is not a Loan Party may hold any Material Intellectual Property at any time, including property that was Material Intellectual Property at the time of acquisition by such Subsidiary or becomes Material Intellectual Property thereafter.

“Material Real Property” means any fee-owned real property with a book value greater than \$2,000,000 as determined on the Effective Date (for existing fee-owned real property) or, with respect to after-acquired fee-owned real property, on the date of acquisition thereof or of the Person that owns such fee-owned real property.

“Material Subsidiary” means (a) each wholly-owned Restricted Subsidiary that, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 1.00% of the consolidated revenues or total assets, as applicable, of the Borrower for such quarter or that is designated by the Borrower as a Material Subsidiary and (b) any group comprising wholly-owned Restricted Subsidiaries that each would not have been a Material Subsidiary under clause (a) but that, taken together, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 2.50% of the consolidated revenues or total assets, as applicable, of the Borrower for such quarter; *provided* that solely for purposes of Sections 7.01(h) and 7.01(i) each such Restricted Subsidiary forming part of such group is subject to an Event of Default under one or more of such Sections.

“Maturity Date” means the earliest of (i) the date that is 6 months after the Effective Date, as such date may be extended pursuant to Section 2.19, (ii) the date on which all Loans are accelerated and all unfunded Commitments (if any) have been terminated in accordance with this Agreement, by operation of law or otherwise, (iii) the date the Bankruptcy Court orders a conversion of the Chapter 11 Cases to a chapter 7 liquidation or the dismissal or termination of the chapter 11 case or the Canadian Recognition Proceeding of any Debtor, (iv) the closing of any sale of assets pursuant to Section 363 of the U.S.



Bankruptcy Code, which when taken together with all other sales of assets since the Effective Date, constitutes a sale of substantially all of the assets of the Loan Parties, (v) the Plan Consummation Date and (vi) proceedings under or pursuant to the BIA have been commenced in respect of the Canadian Guarantors unless otherwise consented to in writing by the Required Lenders (which consent may be communicated via an email from either of the Specified Lender Advisors).

“Maximum Rate” has the meaning assigned to such term in Section 9.18.

“Milestones” means the Milestones set forth in Section 5.20.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage” means a mortgage, deed of trust, assignment of leases and rents or other security document granting a Lien on any Mortgaged Property to secure the Secured Obligations, *provided, however*, in the event any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes or similar fees, the applicable Mortgage shall not secure an amount in excess of 100% of the Fair Market Value of such Mortgaged Property. Each Mortgage shall be substantially in the form of Exhibit Q with such modifications as may be required by, or customary to account for, local law matters.

“Mortgaged Property” means Material Real Property with respect to which a Mortgage is granted pursuant to Section 4.01(f) (if any), 5.11, 5.12 or 5.14.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any ERISA Affiliate is then making contributions, or accruing an obligation to make contributions, or has within the last six plan years made contributions, including, for these purposes, any Person which ceased to be an ERISA Affiliate during such six year period.

“Net Proceeds” means, with respect to any event, (a) the proceeds received in respect of such event in cash or Permitted Investments, including (i) any cash or Permitted Investments received in respect of any non-cash proceeds, including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out (but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by Holdings, the Borrower and the Restricted Subsidiaries in connection with such event (including attorney’s fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary fees), (ii) in the case of a Disposition of an asset (including pursuant to a Sale Leaseback or Casualty Event or similar proceeding), (x) the amount of all payments that are permitted hereunder and are made by Holdings, the Borrower and the Restricted Subsidiaries as a result of such event to repay Indebtedness (other than the Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of Holdings, any Intermediate Parents, the Borrower and the Restricted Subsidiaries as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by Holdings, the Borrower or the Restricted Subsidiaries and (iii) the amount of all Taxes paid (or reasonably estimated to be payable), and the amount of any reserves established by Holdings, the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event, *provided* that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.



“Non-Cash Compensation Expense” means any non-cash expenses and costs that result from the issuance of stock-based awards, partnership interest-based awards and similar incentive based compensation awards or arrangements.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Obligations” means (a) the due and punctual payment by the Borrower of (i) the principal of and interest at the applicable rate or rates provided in this Agreement (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower under or pursuant to this Agreement and each of the other Loan Documents, including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual payment and performance of all other obligations of the Borrower under or pursuant to each of the Loan Documents and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents (including interest and monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

“OFAC” has the meaning assigned to such term in Section 3.18(d).

“Organizational Documents” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future recording, stamp, court or documentary, intangible, filing or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document, except any such Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17(b)).

“Parent Entity” means any Person that is a direct or indirect parent of the Borrower.

“Participant” has the meaning assigned to such term in Section 9.04(c)(i).

“Participant Register” has the meaning assigned to such term in Section 9.04(c)(ii).

“Patent License” means any written agreement, now or hereafter in effect, granting to any Person any right to make, use or sell any invention on which a Patent, now or hereafter owned by any other Person or that any other Person now or hereafter otherwise has the right to license, is in existence, and all rights of any such Person under any such agreement.



“Patents” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all letters patent of the United States or the equivalent thereof in any jurisdiction or territory, all registrations and recordings thereof, and all applications for letters patent of the United States or the equivalent thereof in any other jurisdiction or territory, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other jurisdiction or territory; (b) all reissues, continuations, divisions, continuations-in-part, renewals, improvements or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein; and (c) all rights to sue for past, present and future infringements of any of the foregoing.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Receivables Financing” means, collectively, the receivables securitizations or other receivables financing (including any factoring program) in effect as of the Effective Date pursuant to that certain Amended and Restated Receivables Purchase Agreement, dated as of June [ \_ ], 2023, by and among, *inter alia*, Cyxtera Receivables Holdings, LLC, a Delaware limited liability company, PNC Bank, National Association as administrative agent, Cyxtera Communications, LLC, a Missouri limited liability company, in its individual capacity and as initial servicer, PNC Capital Markets LLC, a Pennsylvania limited liability company, as structuring agent (without giving effect to any amendments or modifications thereto entered on or after the Effective Date, other than those approved by a Direction of the Required Lenders, in an aggregate amount not to exceed \$37,500,000 that are non-recourse to Holdings and the Restricted Subsidiaries (except for (x) any customary limited recourse or recourse limited to a Receivables Subsidiary, (y) any customary performance undertaking or Guarantee, including the Originator Performance Guaranty, between Cyxtera Communications, LLC and Cyxtera Federal Group, Inc. and (z) a customary unsecured parent Guarantee (a “Receivables Guarantee”) by Holdings, Intermediate Holdings or a Restricted Subsidiary that is a parent company of a Restricted Subsidiary of obligations of Restricted Subsidiaries, and, in each case, reasonable extensions thereof); *provided* that with respect to Permitted Receivables Financings incurred in the form of a factoring program, the outstanding amount of such Permitted Receivables Financing for the purposes of this definition shall be deemed to be equal to the Permitted Receivables Net Investment for the last Test Period.

“Permitted Receivables Net Investment” means the aggregate cash amount paid by the purchasers under any Permitted Receivables Financing in the form of a factoring program in connection with their purchase of accounts receivable and customary related assets or interests therein, as the same may be reduced from time to time by collections with respect to such accounts receivable and related assets or otherwise in accordance with the terms of such Permitted Receivables Financing (but excluding any such collections used to make payments of commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Receivables Financing in the form of a factoring program which are payable to any Person other than the Borrower or a Restricted Subsidiary).

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR.”

“Permitted Encumbrances” means:

- (a) Liens for taxes or other governmental charges that are not overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;



- (b) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or construction contractors' Liens and other similar Liens arising in the ordinary course of business that secure amounts not overdue for a period of more than 30 days or, if more than 30 days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (c) Liens incurred or deposits made in the ordinary course of business (i) in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) insurance carriers providing property, casualty or liability insurance to Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or otherwise supporting the payment of items set forth in the foregoing clause (i);
- (d) Liens incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, incurred in the ordinary course of business or consistent with past practices;
- (e) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole;
- (f) Liens securing, or otherwise arising from, judgments not constituting an Event of Default under Section 7.01(j);
- (g) Liens on goods the purchase price of which is financed by a documentary letter of credit issued for the account of the Borrower or any of its Subsidiaries or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments, *provided* that such Lien secures only the obligations of the Borrower or such subsidiaries in respect of such letter of credit to the extent such obligations are permitted by Section 6.01;
- (h) rights of set-off, banker's lien, netting agreements and other Liens arising by operation of law or by of the terms of documents of banks or other financial institutions in relation to the maintenance of administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments; and
- (i) Liens arising from precautionary Uniform Commercial Code financing statements or any similar filings made in respect of operating leases entered into by the Borrower or any of its subsidiaries.

"Permitted Holder" means (a) the Sponsor; (b) Longview Asset Management LLC, (c) the Management Investors and their Immediate Family Members; and (d) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the date hereof) of which the Persons described in clauses (a), (b) and/or (c) are members; provided that the Persons described in clauses (a), (b) and/or (c) beneficially own a majority of the Equity Interests beneficially owned by such group..



“Permitted Investments” means any of the following, to the extent owned by the Borrower or any Restricted Subsidiary:

- (a) Dollars, euro, Sterling, Canadian Dollars, Singapore dollars, yuan or such other currencies held by it from time to time in the ordinary course of business;
- (b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States or (ii) any member nation of the European Union rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, having average maturities of not more than 24 months from the date of acquisition thereof; *provided* that the full faith and credit of the United States or such member nation of the European Union is pledged in support thereof;
- (c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) has combined capital and surplus of at least (x) \$250,000,000 in the case of U.S. banks and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks (any such bank meeting the requirements of clause or (ii) above being an “Approved Bank”), in each case with average maturities of not more than 12 months from the date of acquisition thereof;
- (d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 24 months from the date of acquisition thereof;
- (e) repurchase agreements entered into by any Person with an Approved Bank, a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of (x) \$250,000,000 in the case of U.S. banks and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks, in each case, for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of (i) the United States or (ii) any member nation of the European Union rated A (or the equivalent thereof) or better by S&P and A2 (or the equivalent thereof) or better by Moody’s, in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a Fair Market Value of at least 100% of the amount of the repurchase obligations;
- (f) marketable short-term money market and similar highly liquid funds either (i) having assets in excess of (x) \$250,000,000 in the case of U.S. banks or other U.S. financial institutions and (y) \$100,000,000 (or the dollar equivalent as of the date of determination) in the case of non-U.S. banks or other non-U.S. financial institutions or (ii) having a rating of at least A-2 or P-2 from either S&P or Moody’s (or, if at any time neither S&P nor Moody’s shall be rating such obligations, an equivalent rating from another nationally recognized rating service);
- (g) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, or by any political subdivision or taxing authority of any such state, commonwealth or territory having an investment grade rating from either S&P or Moody’s (or the equivalent thereof);



- (h) investments with average maturities of 12 months or less from the date of acquisition in mutual funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;
- (i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in euro or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction;
- (j) investments, classified in accordance with GAAP as current assets, in money market investment programs that are registered under the Investment Company Act of 1940 or that are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (i) of this definition;
- (k) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, *provided* such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business, *provided* such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and in each case with maturities of not more than 24 months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank; and
- (l) investment funds investing at least 90% of their assets in securities of the types described in clauses (a) through (k) above.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" shall have the meaning assigned to such term in the recitals of this Agreement.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and (i) in respect of which a Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA or (ii) has at any time within the preceding six years been maintained, sponsored or contributed to by any Loan Party or any ERISA Affiliate.

"Plan Consummation Date" shall mean the date of the substantial consummation (as defined in Section 1101 of the U.S. Bankruptcy Code) of a chapter 11 plan of reorganization, which, for purposes of this Agreement, shall be no later than the effective date of a chapter 11 plan of reorganization that is confirmed pursuant to an order of the Bankruptcy Court.

"Plan of Reorganization" means a plan of reorganization with respect to the Loan Parties and their Subsidiaries pursuant to the Chapter 11 Cases.



“PPSA” means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, that, if attachment, perfection, the effect of perfection or non-perfection or the priority of Collateral Agent’s Lien on any Collateral are governed by the personal property security laws of any jurisdiction in Canada other than the laws of the Province of Ontario, “PPSA” means those personal property security laws in such other jurisdiction in Canada (including the Civil Code of Quebec) for the purposes of the provisions hereof relating to such attachment, perfection, the effect of perfection or non-perfection or such priority and for the definitions relating to such provisions.

“Platform” has the meaning specified in Section 5.01.

“Prepetition” means the time period ending immediately prior to the filing of the Chapter 11 Cases.

“Prepetition Existing Administrative Agent” means the “Administrative Agent” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Credit Agreement” means that certain Credit Agreement entered into as of May 1, 2017, among Initial Holdings, the Borrower, Citibank, N.A., as administrative agent, collateral agent and L/C issuer, and each lender from time to time party thereto (as the same may be amended, amended and restated, modified, refinanced and/or restated prior to the date hereof).

“Prepetition Existing Lenders” means the “Lenders” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Liens” means the Liens securing obligations under the Prepetition Existing Credit Agreement and the other Prepetition Existing Loan Documents.

“Prepetition Existing Loan Documents” means the “Loan Documents” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Obligations” means the “Loan Document Obligations” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Existing Secured Parties” means the “Secured Parties” as defined in the Prepetition Existing Credit Agreement.

“Prepetition Indebtedness” shall mean all Indebtedness of the Loan Parties outstanding on the Petition Date immediately prior to the filing of the Chapter 11 Cases.

“Prepetition Priority Administrative Agent” shall have the meaning assigned to such term in the recitals of this Agreement.

“Prepetition Priority Collateral Agent” means Wilmington Savings Fund Society, FSB, in its capacity as collateral agent under the Prepetition Priority Credit Agreement.

“Prepetition Priority Agents” shall mean the Prepetition Priority Administrative Agent and the Prepetition Priority Collateral Agent.

“Prepetition Priority Credit Agreement” shall have the meaning assigned to such term in the recitals of this Agreement.



“Prepetition Priority Lenders” shall have the meaning assigned to such term in the recitals of this Agreement.

“Prepetition Priority Loans” shall have the meaning assigned to such term in the recitals of this Agreement.

“Prepetition Priority Loan Documents” shall mean the “Loan Documents” as defined in the Prepetition Priority Credit Agreement.

“Prepetition Priority Obligations” shall mean the “Loan Document Obligations” as defined in the Prepetition Priority Credit Agreement.

“Prepayment Event” means:

- (a) any sale, transfer or other Disposition of any property or asset of Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries pursuant to Section 6.05(j), Section 6.05(k) and Section 6.05(n); or
- (b) the incurrence by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 6.01 or permitted by the Required Lenders pursuant to Section 9.02 (or other requisite Lenders as specified in Section 9.02).

“Primary Syndication” means the primary syndication of the Loans and the assignments of the Loans in connection with the offering of the right to participate in the Loans that shall be made available to all “Lenders” under the Prepetition Existing Credit Agreement.

“Primary Syndication Procedures” means the procedures to effect the Primary Syndication that will be in form and substance acceptable to the Required Lenders.

“Prime Rate” means the rate of interest per annum last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective.

“Proposed Change” has the meaning assigned to such term in Section 9.02(c).

“PSF” has the meaning assigned to such term in Section 5.22.

“Public Lender” has the meaning specified in Section 5.01.

“Qualified Equity Interests” means Equity Interests in Holdings or any parent of Holdings other than Disqualified Equity Interests.

“Receivables Guarantee” has the meaning assigned to such term in the definition of “Permitted Receivables Financing.”

“Receivables Order” means any order approving the Debtors' Motion to 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, in form and substance reasonably satisfactory to the Required Lenders.

“Receivables Program” has the meaning assigned to such term in the Receivables Order.

“Receivables Subsidiary” means any Special Purpose Entity established in connection with a Permitted Receivables Financing.

“Register” has the meaning assigned to such term in Section 9.04(b)(iv).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the partners, directors, officers, employees, trustees, agents, controlling persons, advisors and other representatives of such Person and of each of such Person’s Affiliates and permitted successors and assigns.

“Release” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) and including the environment within any building or other structure.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Remedies Notice Period” shall have the meaning assigned to such term in Section 7.01.

“Removal Effective Date” has the meaning assigned to such term in Article VIII.

“Required Lenders” means, at any time, Lenders having (a) Term Loans outstanding and (b) unused Commitments that, taken together, represent more than 50% of the sum of (x) all Term Loans outstanding and (y) all unused Commitments at such time; *provided* that whenever there are one or more Defaulting Lenders or Disqualified Lenders, the total amount of outstanding Term Loans and unused Commitments of each Defaulting Lender and each Disqualified Lender shall, in each case, be excluded for purposes of making a determination of Required Lenders.

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject (including any order of the Bankruptcy Court).

“Resignation Effective Date” has the meaning assigned to such term in Article VIII.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer, or other similar officer, manager or a director of a Loan Party and with respect to certain limited liability companies or partnerships that do not have officers, any manager, sole member, managing member or general partner thereof, and as to any document delivered on the Effective Date or thereafter pursuant to paragraph (a) of the definition of the term “Collateral and Guarantee Requirement,” any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.



“Restricted Debt Payments” has the meaning set forth in Section 6.08(b).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests.

“Restricted Subsidiary” means any Subsidiary.

“Retained Declined Proceeds” has the meaning assigned to such term in Section 2.09(d).

“Rolling Four Week Testing Period” mean each cumulative period of four weeks ending on the Friday of each of the calendar weeks, respectively.

“Roll-Up Loans” has the meaning assigned to such term in Section 2.01(b).

“RSA” means the Restructuring Support Agreement dated as of May 4, 2023 (as may be amended, restated, supplemented or otherwise modified from time to time), including, the exhibits, annexes and schedules thereto.

“RSA Termination Event” shall mean an event described in Section 12 of the RSA, which with the taking of applicable action thereunder would result in the termination of the RSA.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“Sale Leaseback” means any transaction or series of related transactions pursuant to which the Borrower or any other Restricted Subsidiary (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed of.

“Sanctions” means economic sanctions administered or enforced by the United States Government (including without limitation, sanctions enforced by OFAC), the United Nations Security Council, the European Union or Her Majesty’s Treasury.

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Secured Obligations” means the Obligations.

“Secured Parties” means (a) each Lender, (b) the Administrative Agent and Collateral Agent and (c) the permitted successors and assigns of each of the foregoing.

“Security Documents” means the DIP Order, the UK Security Agreements, the Canadian DIP Recognition Order and any other document pursuant to which a Loan Party grants a security interest to secure the Obligations.



“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Borrowing” means a Borrowing of a SOFR Loan.

“SOFR Loan” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “ABR”.

“Special Purpose Entity” means a direct or indirect subsidiary of Holdings, whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve its separateness from Holdings and/or one or more Subsidiaries of Holdings.

“Specified Lender Advisors” shall mean (x) Gibson, Dunn & Crutcher LLP, as legal counsel, and (y) Houlihan Lokey Capital, Inc, as financial advisor.

“Sponsor” means each of (a) BC Partners, Inc. and its Affiliates, including the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby, and any investors in such funds (including committed investors in BC European Capital X, L.P.), partnerships or other co-investments vehicles as of the Effective Date, but other than, in each case, Holdings and its Subsidiaries or any portfolio company, and (b) Medina Capital Advisors, LLC and its Affiliates (including the funds, partnerships or other co-investment vehicles managed, advised or controlled thereby but other than, in each case, Holdings and its Subsidiaries or any portfolio company).

“Spot Rate” means on any day with respect to any currency other than Dollars, the rate at which such currency may be exchanged into Dollars (at the bid price), as set forth at approximately 11:00 a.m., London time, on such day as determined by OANDA Corporation (and available at <http://www.oanda.com/>) for such currency; in the event that such rate is not determined by OANDA Corporation, the Spot Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent (acting at the Direction of the Required Lenders) and the Borrower, or, in the absence of such agreement, such Spot Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., New York City time, on such date for the purchase of Dollars for delivery two Business Days later.

“SPV” has the meaning assigned to such term in Section 9.04(e).

“Subordinated Indebtedness” means any Junior Financing under clause (a) of the definition thereof.

“Submitted Budget” has the meaning assigned to such term in Section 5.21(a).

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such



date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Loan Party” means each Subsidiary that is a party to the Guarantee Agreement.

“Successor Borrower” has the meaning assigned to such term in Section 6.03(a)(iv).

“Successor Holdings” has the meaning assigned to such term in Section 6.03(a)(v).

“Swap” means any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Person, any obligation to pay or perform under any Swap.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Commitment” means, with respect to each Term Lender, its Initial Term Commitment.

“Term Lenders” means initially the Persons listed on Schedule 2.01(b) and as of any date of determination from and after the Effective Date, any other Person that shall have become a party hereto pursuant to an Assignment and Assumption in respect of any Term Loans, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Term Loans” means, individually and collectively, the Initial Term Loans, the Roll-Up Loans and the Transferred Loans.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if



as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; *provided*, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day; *provided, further*, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Term SOFR Adjustment” means, for any calculation with respect to an ABR Loan or a SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

ABR Loans: 0.11448%

SOFR Loans:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.11448%
Three months	0.26161%
Six months	0.42826%

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.



“Test Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ending on or prior to such date for which financial statements have been (or were required to have been) delivered pursuant to Section 5.01(a) or Section 5.01(b); *provided* that prior to the first date financial statements have been delivered pursuant to Section 5.01(a) or Section 5.01(b), the Test Period in effect shall be the period of four consecutive fiscal quarters of the Borrower ended December 31, 2022.

“Trade Secrets” means, with respect to any Person, all of such Person’s right, title and interest in and to the following: (a) any and all confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, data, databases and data collections and (b) all rights corresponding to any of the foregoing throughout the world.

“Trademark License” means any written agreement, now or hereafter in effect, granting to any Person any right to use any Trademark now or hereafter owned by any other Person or that any other Person otherwise has the right to license, and all rights of any such Person under any such agreement.

“Trademarks” means, with respect to any Person, all of the following now owned or hereafter acquired by such Person: (a) all trademarks, service marks, trade names, brand names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, domain names, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other jurisdiction or territory or any political subdivision thereof, and all extensions or renewals thereof, as well as any unregistered trademarks or service marks used by a Person; (b) all goodwill associated therewith or symbolized by the foregoing; (c) all other assets, rights and interests that uniquely reflect or embody such goodwill; and (d) all rights to sue for past, present and future infringements of any of the foregoing.

“Transactions” means, collectively, (a) the negotiation, execution and delivery by each Loan Party of the Loan Documents to which it is to be a party and the borrowing and the funding of the Initial Term Loans and the issuance of the Roll-Up Loans on the Effective Date and (b) the payment of the fees and expenses incurred in connection with any of the foregoing (including the Transaction Costs).

“Transaction Costs” means any fees, costs or expenses incurred or paid by any Parent Entity, Initial Holdings, the Borrower or any Subsidiary in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

“Transferred Loans” has the meaning assigned to such term in Section 2.01(b).

“Type,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Term SOFR Rate or the Alternate Base Rate.

“UCC” or “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a U.S. jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code



as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“UK Collateral Documents” means (i) the UK Security Agreements, (ii) security accession deeds governed by the laws of England and Wales and (iii) any Security Document governed by the laws of England and Wales.

“UK Security Agreements” means the Debenture Agreement.

“UK Subsidiary” means any existing or future direct or indirect subsidiary of the Borrower that is incorporated under the laws of England and Wales.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended from time to time.

“U.S. Bank Cash” means cash of the Borrower and its Subsidiaries deposited in commercial banks located in the United States and Permitted Investments of the Borrower and its Subsidiaries, as currently reported in the Approved Budget and in a manner consistent with past practices (excluding amounts held for customers pursuant to the terms of the agreements with such customers and which are excluded from the Approved Budget and related reporting).

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“Variance Testing Period” shall mean, as applicable, each of (a) the First Testing Period and (b) each Rolling Four Week Testing Period ending on each second Friday thereafter, commencing with the Rolling Four Week Testing Period ending on June 30, 2023.

“Vehicles” means all railcars, cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state and all tires and other appurtenances to any of the foregoing.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“wholly-owned subsidiary” means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than (a) directors’ qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law) are, as of such date, owned, controlled or held by such Person or one or more wholly-owned subsidiaries of such Person or by such Person and one or more wholly-owned subsidiaries of such Person.



“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withdrawal Notice” means a notice substantially in the form attached hereto as Exhibit R to be delivered by the Borrower to the Escrow Agent and the Administrative Agent from time to time to request a Withdrawal from the Loan Proceeds Account.

“Withholding Agent” shall mean any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02     Classification of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Class (e.g., a “Term Loan”) or by Type (e.g., a “SOFR Loan”) or by Class and Type (e.g., a “SOFR Term Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Term Borrowing”) or by Type (e.g., a “SOFR Borrowing”) or by Class and Type (e.g., a “SOFR Term Borrowing”).

SECTION 1.03     Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any agreement (including this Agreement and the other Loan Documents), instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04     Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP.

(b) [Reserved.]

(c) Where reference is made to “the Borrower and the Restricted Subsidiaries on a consolidated basis” or similar language, such consolidation shall not include any Subsidiaries of the Borrower other than the Restricted Subsidiaries.



(d) In the event that the Borrower elects to prepare its financial statements in accordance with IFRS and such election results in a change in the method of calculation of financial covenants, standards or terms (collectively, the “Accounting Changes”) in this Agreement, the Borrower and the Administrative Agent agree to enter into good faith negotiations in order to amend such provisions of this Agreement so as to reflect equitably the Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be substantially the same after such change as if such change had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed in accordance with GAAP (as determined in good faith by a Responsible Officer of the Borrower) (it being agreed that the reconciliation between GAAP and IFRS used in such determination shall be made available to Lenders) as if such change had not occurred.

SECTION 1.05 Effectuation of Transactions. All references herein to Holdings, the Borrower and their subsidiaries shall be deemed to be references to such Persons, and all the representations and warranties of Holdings, any Intermediate Parents, the Borrower and the other Loan Parties contained in this Agreement and the other Loan Documents shall be deemed made, in each case, after giving effect to the Transactions to occur on the Effective Date, unless the context otherwise requires.

SECTION 1.06 Currency Translation; Rates.

(a) For purposes of any determination under Article V, Article VI or Article VII or any determination under any other provision of this Agreement, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at the Spot Rate (rounded to the nearest currency unit, with 0.5 or more of a currency unit being rounded upward); *provided, however*, that for purposes of determining compliance with Article VI with respect to the amount of any Indebtedness, Investment, Disposition, Restricted Payment or Restricted Debt Payment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred or Disposition, Restricted Payment or Restricted Debt Payment is made; *provided further*, that, for the avoidance of doubt, the foregoing provisions of this Section 1.06 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred or Disposition, Restricted Payment or Restricted Debt Payment made at any time under such Sections. For purposes of any determination of Consolidated Total Debt, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing the most recently delivered financial statements pursuant to Section 5.01(a) or Section 5.01(b). Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower’s consent (such consent not to be unreasonably withheld) to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

(b) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Term SOFR Rate” or with respect to any comparable or successor rate thereto, except as expressly provided herein.

SECTION 1.07 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including



any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.08 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.09 Collateral Located in the Province of Québec. For purposes of any Collateral located in the Province of Québec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "tangible property" shall be deemed to include "corporeal property", (c) "intangible property" shall be deemed to include "incorporeal property", (d) "security interest" and "mortgage" shall be deemed to include a "hypothec", (e) all references to filing, registering or recording under the UCC or the PPSA shall be deemed to include publication under the Civil Code of Québec, (f) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (g) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (h) an "agent" shall be deemed to include a "mandatary", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) "construction liens" shall be deemed to include "legal hypothecs in favor of persons having taken part in the construction or renovation of an immovable"; (k) "joint and several" shall be deemed to include solidary; (l) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault"; (m) "beneficial ownership" shall be deemed to include "ownership"; (n) "easement" shall be deemed to include a servitude; (o) "priority" shall be deemed to include "rank" or "prior claim", as applicable; (p) "survey" shall be deemed to include "certificate of location and plan"; (q) "state" shall be deemed to include "province"; (r) "fee simple title" shall be deemed to include "absolute ownership"; (s) "legal title" shall be deemed to include "holding title as mandatary or prête-nom on behalf of an owner" (t) "leasehold interest" shall be deemed to include "rights resulting from a lease"; and (u) "lease" shall be deemed to include a "contract of leasing (crédit-bail)".

## ARTICLE II THE CREDITS

SECTION 2.01 Commitments.



(a) Subject to the terms and conditions set forth herein, each Lender agrees to make a Term Loan denominated in Dollars to the Borrower on the Effective Date in a principal amount not exceeding its Initial Term Loan Commitment. Amounts repaid or prepaid in respect of Loans may not be reborrowed. Upon a Lender's funding of a Term Loan on the Effective Date, such Lender's Initial Term Loan Commitment shall be permanently reduced to zero and shall terminate as of the Effective Date.

(b) On the Effective Date, concurrently with the making of the Initial Term Loans pursuant to Section 2.01(a) above, (x) \$36,000,000 in aggregate principal amount of Prepetition Priority Loans and all accrued and unpaid interest with respect to the Prepetition Priority Loans shall be deemed converted into and exchanged for Term Loans under this Agreement (the Prepetition Priority Loans and accrued and unpaid interest rolled-up pursuant to this Section 2.01(b), the "Roll-Up Loans"), and Roll-Up Loans in such principal amount shall be deemed funded on the Effective Date, without constituting a novation, and shall satisfy and discharge in full all Prepetition Priority Loans and (y) \$14,000,000 in aggregate principal amount of Prepetition Priority Loans held in the Loan Proceeds Account (as defined in that certain Escrow Agreement, dated as of May 4, 2023, by the Borrower and the Escrow Agent (the "Existing Escrow Agreement")) shall be transferred to the Borrower's account as specified in such Existing Escrow Agreement on the Effective Date and an equal amount of Term Loans shall be deemed advanced to the Borrower (collectively, the "Transferred Loans"). Each of the Roll-Up Loans and the Transferred Loans will constitute Term Loans under this Agreement and will have identical terms as the Initial Term Loans.

(c) Amounts repaid or prepaid in respect of any Term Loans may not be reborrowed.

#### SECTION 2.02 Loans and Borrowings; Roll Up.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Facility, Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Facility and Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, *provided* that the Commitments of the Lenders are several and, other than as expressly provided herein with respect to a Defaulting Lender, no Lender shall be responsible for any other Lender's failure to make Loans as required hereby.

(b) Subject to Section 2.12, each Borrowing shall be comprised entirely of ABR Loans or SOFR Loans as the Borrower may request in accordance herewith; *provided* that all Borrowings made on the Effective Date must be made as ABR Borrowings unless the Borrower shall have given the notice required for a SOFR Borrowing under Section 2.03.

(c) At the commencement of each Interest Period for any Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; *provided* that a SOFR Borrowing that results from a continuation of an outstanding SOFR Borrowing may be in an aggregate amount that is equal to such outstanding Borrowing. ABR Borrowings may be in any amount. Borrowings of more than one Type may be outstanding at the same time; *provided* that there shall not at any time be more than a total of 3 SOFR Borrowings outstanding under a Facility at the same time.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing under a Facility if the Interest Period requested with respect thereto would end after the Maturity Date for such Facility.

(e) Interest shall begin to accrue on the Roll-Up Loans from (and including) the date such Roll-Up Loans are deemed made in accordance with Section 2.01(b) (which shall be upon entry of the Interim Order).



### SECTION 2.03     Request for Borrowings.

(a) To request a Borrowing, the Borrower shall notify the Administrative Agent of such request in writing not later than 3:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing, which Borrowing (or such shorter period of time as may be agreed to by the Administrative Agent (acting at the Direction of the Required Lenders)). Each such Borrowing Request shall be irrevocable and shall be delivered by hand delivery, facsimile or other electronic transmission to the Administrative Agent and shall be signed by the Borrower. Each such Borrowing Request shall specify the following information:

(i) the Facility, Class and Type of Loans to be borrowed or to which existing Loans are to be converted;

(A) the aggregate amount of such Borrowing;

(B) the date of such Borrowing, which shall be a Business Day;

(C) [reserved]; and

(D) in the case of a SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”.

If no Interest Period is specified with respect to any requested SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. If no currency is specified with respect to any requested SOFR Borrowing, then the Borrower shall be deemed to have requested that the Borrowing be denominated in Dollars. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the applicable Facility and Class of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

### SECTION 2.04     Funding of Borrowings.<sup>2</sup>

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds in Dollars by 2:00 p.m., New York City time to the Applicable Account of the Administrative Agent most-recently designated by it for such purpose by notice to the Lenders.

(b) Upon receipt of funds from each Lender in accordance with Section 2.04(a) above, the Administrative Agent shall fund the net proceeds of the Effective Date Direct Borrowing in accordance with the Flow of Funds Statement, and the net proceeds of the Initial Term Loans less the amount of the Effective Date Direct Borrowing shall be deposited in the Loan Proceeds Account pursuant to the Escrow Agreement.

(c) Unless the Administrative Agent shall have been notified by any Lender prior to the date of any such Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing to be made on the Effective Date, the Administrative Agent shall assume that such Lender has made such amount available to the Administrative Agent on the Effective Date, and the Administrative Agent, in reliance upon such assumption, shall make such amount available to the Borrower and/or make a deposit into the Loan Proceeds Account a corresponding amount. If such corresponding

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<sup>2</sup> NTD: All fee and expense payments shall reduce the amount of the Effective Date Direct Borrowing.



amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made such amount available to the Borrower and/or deposited such amount into the Loan Proceeds Account, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent in Dollars. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if paid by such Lender, the Overnight Bank Funding Rate or (ii) if paid by the Borrower, the then applicable rate of interest or fees, calculated in accordance with Section 2.11, for the respective Loans. For the avoidance of doubt, all parties agree that all Loans shall be funded and accrue interest starting on the Effective Date, including any Loans the proceeds of which have been deposited into the Loan Proceeds Account.

#### SECTION 2.05     Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section; provided that, notwithstanding anything to the contrary herein, no Loan may be converted into or continued as a Loan denominated in a different currency but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and confirmed promptly to the Administrative Agent by hand delivery, facsimile or other electronic transmission to the Administrative Agent in the form of a written Interest Election Request signed by the Borrower.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.03:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a SOFR Borrowing; and



(iv) if the resulting Borrowing is to be a SOFR Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period.”

If any such Interest Election Request requests a SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request in accordance with this Section, the Administrative Agent shall advise each Lender of the applicable Class of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a SOFR Borrowing denominated in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing.

Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, with respect to Loans denominated in Dollars, (i) no outstanding Borrowing under any Facility may be converted to or continued as a SOFR Borrowing and (ii) unless repaid, each SOFR Borrowing of Loans shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.06 [Reserved].

SECTION 2.07 Repayment of Loans; Evidence of Debt.

(a) [Reserved].

(b) Term Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender as provided in Section 2.08.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof, the currency thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(e) The entries made in the accounts maintained pursuant to paragraphs (c) or (d) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein, *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to pay any amounts due hereunder in accordance with the terms of this Agreement. In the event of any inconsistency between the entries made pursuant to paragraphs (c) and (d) of this Section, the accounts maintained by the Administrative Agent pursuant to paragraph (d) of this Section shall control.



(f) Any Lender may request through the Administrative Agent that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form provided by the Administrative Agent and approved by the Borrower.

#### SECTION 2.08 Amortization of Term Loans.

(a) [Reserved].

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Maturity Date applicable to such Term Loans, or, if such date is not a Business Day, on the next preceding Business Day.

(c) Any prepayment of a Borrowing of any Class of Term Loans (i) pursuant to Section 2.09(a) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Borrowings of such Class of Term Loans to be made pursuant to this Section as directed by the Borrower (and absent such direction in direct order of maturity) and (ii) pursuant to Section 2.09(b) or 2.09(c) shall be applied to reduce the subsequent scheduled and outstanding repayments of the Borrowings of such Class of Term Loans to be made pursuant to this Section in direct order of maturity.

(d) Prior to any repayment of any Borrowings of any Class of Term Loans hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class of Term Loans to be repaid and shall notify the Administrative Agent in writing (via hand delivery or facsimile) of such election not later than 3:00 p.m., New York City time, two Business Day before the scheduled date of such repayment. Each repayment of a Borrowing of Term Loans shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Borrowings of Term Loans shall be accompanied by accrued interest on the amount repaid.

#### SECTION 2.09 Prepayment of Loans.

(a) The Borrower may prepay any Borrowing in whole or in part, without premium or penalty.

(b) In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings, any Intermediate Parents, the Borrower or any of the Restricted Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five Business Days after such Net Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term "Prepayment Event," on the date of such Prepayment Event), prepay Term Loans in an aggregate amount equal to 100% of the amount of such Net Proceeds; *provided* that, pending such prepayment, the Borrower shall hold such Net Proceeds in a deposit account subject to an Account Control Agreement (to the extent the assets sold were Collateral).

(c) [Reserved].

(d) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (e) of this Section. In the event of any mandatory prepayment of Term Loans made at a time when more than one Class of Term Loans remain outstanding, the Borrower shall select the Loans to be prepaid so that the aggregate amount of such prepayment is allocated between such Classes of Term Loans pro rata based on the aggregate principal amount of outstanding Borrowings of each such Class; *provided* that any Lender may elect, by notice to the Administrative Agent in writing (via hand delivery or facsimile) at least one Business Day prior to the prepayment date, to decline all or any portion



of any prepayment of its Loans of any such Class pursuant to this Section (other than an optional prepayment pursuant to paragraph (a) of this Section or a mandatory prepayment as a result of the Prepayment Event set forth in clause (b) of the definition thereof, which may not be declined), in which case the aggregate amount of the prepayment that would have been applied to prepay Loans of any such Class but was so declined may be retained by the Borrower and the Restricted Subsidiaries (such amounts, “Retained Declined Proceeds”). Optional prepayments of Borrowings shall be allocated among the Classes of Borrowings as directed by the Borrower.

(e) The Borrower shall notify the Administrative Agent in writing (via hand delivery, facsimile or other electronic communication) of any prepayment hereunder (i) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment and (ii) in the case of prepayment of a SOFR Borrowing, not later than 11:00 a.m. (New York City time), three Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; *provided that*, so long as the Administrative Agent is notified prior to the prepayment date, a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type and currency as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11. At the Borrower’s election in connection with any prepayment pursuant to this Section 2.09, such prepayment shall not be applied to any Loan of a Defaulting Lender and shall be allocated ratably among the relevant non-Defaulting Lenders.

(f) Notwithstanding any other provisions of Section 2.09(b) or (c), (A) to the extent that any of or all the Net Proceeds of any Prepayment Event set forth in clause (a) of the definition thereof by a Foreign Subsidiary giving rise to a prepayment pursuant to Section 2.09(b) (a “Foreign Prepayment Event”) are prohibited or delayed by any Requirement of Law from being repatriated to the Borrower, the portion of such Net Proceeds so affected will not be required to be applied to repay Loans at the times provided in Section 2.09(b) or (c), as the case may be, and such amounts may be retained by the applicable Foreign Subsidiary so long as the applicable Requirement of Law will not permit repatriation to the Borrower (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable Requirement of Law to permit such repatriation), and to the extent such repatriation of any of such affected Net Proceeds becomes permitted under the applicable Requirement of Law, such repatriation will be promptly effected and such repatriated Net Proceeds will be promptly (and in any event not later than three Business Days after such repatriation) applied (net of additional Taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.09(b) or (c), as applicable, and (B) to the extent that and for so long as the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) reasonably agree that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds, the Net Proceeds so affected will not be required to be applied to repay Loans at the times provided in Section 2.09(b) or (c), as the case may be, and such amounts may be retained by the applicable Foreign Subsidiary; *provided that* if the Borrower and the Administrative Agent (acting at the Direction of the Required Lenders) agree that repatriation of any of or all the Net Proceeds of any Foreign Prepayment Event would no longer have a material adverse tax consequence (taking into account



any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds, such Net Proceeds shall be promptly (and in any event not later than three Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.09(b) or (c), as applicable.

SECTION 2.10     Fees.

(a)     [Reserved].

(b)     [Reserved].

(c)     [Reserved].

(d)     The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and each applicable Agent).

(e)

(i)     The Borrower agrees to pay to the Administrative Agent, for the account of the funds and/or accounts affiliated with, or managed and/or advised by, the entities set forth on Schedule 2.10(b), on file with the Administrative Agent (the “Backstop Allocation Schedule”, and such entities, together with their respective successors and permitted assignees, or any fronting bank or other funding agent operating on their behalf, the “Backstop Parties”) ratably in accordance with the amounts set forth opposite each such Backstop Party’s name on the Backstop Allocation Schedule, on the Effective Date a non-refundable fee equal to 6.0% of the Initial Term Loans actually provided to the Borrower on the Effective Date (which, for the avoidance of doubt, includes any Initial Term Loans the proceeds of which are deposited into the Loan Proceeds Account), which fee shall be earned, due and payable in cash on, and subject to the occurrence of, the Effective Date (the “Backstop Fee”); provided that, for the avoidance of doubt, no Backstop Fee shall be payable with respect to the Roll-Up Loans or the Transferred Loans.

(ii)    The Borrower agrees to pay to the initial Lender hereunder, for the account of such Lender, the fees set forth in a separate fee letter with such initial Lender.

(iii)   The Borrower agrees to pay to the Administrative Agent for the account of each Lender a non-refundable commitment fee equal to 3.0% of the Initial Term Loans actually provided to the Borrower on the Effective Date (which, for the avoidance of doubt, includes any Initial Term Loans the proceeds of which are deposited into the Loan Proceeds Account), which fee shall be earned, due and payable in cash on, and subject to the occurrence of, the Effective Date (the “Commitment Fee”); provided that, for the avoidance of doubt, no Commitment Fee shall be payable with respect to the Roll-Up Loans or the Transferred Loans.

(f)     All such fees pursuant to clause (e)(i) and clause (e)(iii) above shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of such fees shall be refundable under any circumstances.



SECTION 2.11 Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each SOFR Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2.00% per annum plus the rate applicable to Term Loans that are ABR Loans as provided in paragraph (a) of this Section; *provided* that no amount shall be payable pursuant to this Section 2.11(c) to a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, *provided* that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. Notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, Loans, the proceeds of which are held in the Loan Proceeds Account, shall be deemed to be made and funded hereunder on the Effective Date and shall accrue interest in accordance with Section 2.13 from the Effective Date.

(e) All computations of interest for ABR Loans (including ABR Loans determined by reference to the Term SOFR Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.16, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(f) To the extent applicable, for the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or any other period of time less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or such other period, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

SECTION 2.12 Benchmark Replacement. If at least two Business Days prior to the commencement of any Interest Period for a SOFR Borrowing:



(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate for such Interest Period with respect to a Borrowing; or

(ii) the Administrative Agent is advised by the Required Lenders that the Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (in each case with respect to the Loans impacted by this clause (b) or clause (a) above, "Impacted Loans"),

then, in the case of clause (a) or (b) above, the Administrative Agent shall give notice thereof (and, if requested by the Borrower, reasonably acceptable evidence of such determination) to the Borrower and the Lenders by telephone, facsimile or other electronic communication as promptly as practicable thereafter.

Upon receipt of such notice and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing shall be ineffective and (ii) all Borrowings denominated in Dollars shall be made as an ABR Borrowing and the utilization of the Term SOFR Rate component in determining the Alternate Base Rate shall be suspended.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is based upon Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with the use, administration, adoption or implementation of Term SOFR, the Administrative Agent (at the Direction of the Required Lenders) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use or administration of Term SOFR.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.12(d) and (v) the commencement of any



Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a SOFR Borrowing into a request for a Borrowing of or conversion to an ABR Borrowing. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any SOFR Loan is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to the Term SOFR Rate, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.12, any SOFR Loan shall on the last day of the Interest Period applicable to such Loan be converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day.

#### SECTION 2.13 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Term SOFR Rate); or

(ii) impose on any Lender or the applicable interbank market any other condition, cost or expense (other than with respect to Taxes) affecting this Agreement or SOFR Loans; or

(iii) subject any Lender to any Taxes on its Loans, letters of credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;



and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any SOFR Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such increased costs actually incurred or reduction actually suffered, *provided* that to the extent any such costs or reductions are incurred by any Lender as a result of any requests, rules, guidelines or directives enacted or promulgated under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Basel III after the Effective Date, then such Lender shall be compensated pursuant to this Section 2.13(a) only to the extent such Lender is imposing such charges on similarly situated borrowers under the other syndicated credit facilities under which such Lender is a lender. Notwithstanding the foregoing, this paragraph will not apply to (A) Indemnified Taxes or Other Taxes or (B) Excluded Taxes.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity requirements), then, from time to time upon request of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's for any such reduction actually suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or such Lender's holding company in reasonable detail, as the case may be, as specified in paragraph (a) or (b) of this Section delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

**SECTION 2.14 Syndication.** Following the Effective Date, the Borrower shall use commercially reasonable efforts to assist the Backstop Parties in connection with the Primary Syndication for the assignment of a proportionate share of Loans in accordance with the Primary Syndication Procedures. Upon completion of the Primary Syndication, a revised Schedule 2.01, which shall be prepared by the Specified Lender Advisors and satisfactory to the Required Lenders, shall be delivered to the Administrative Agent and the Borrower, which shall set for the aggregate principal amount of Commitments and Term Loans held by each Lender upon closing of the Primary Syndication.

**SECTION 2.15 Taxes.**

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Requirements of Law. If the applicable Withholding Agent shall be required by applicable Requirements of Law to withhold or deduct any Taxes from such payments, then (i) the applicable Withholding Agent shall make such withholdings or deductions, (ii) the applicable Withholding



Agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law and (iii) if the Tax in question is an Indemnified Tax or Other Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after all required deductions of Indemnified Taxes or Other Taxes have been made (including deductions applicable to additional amounts payable under this Section 2.15) the Administrative Agent and any applicable Lender receives an amount equal to the sum it would have received had no such withholdings or deductions of Indemnified Taxes or Other Taxes been made.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law, or at the option of the Administrative Agent, timely reimburse it for the payment of any Other Taxes.

(c) Without duplication of amounts paid by the Borrower pursuant to Sections 2.15(a) or (b), the Borrower shall indemnify the Administrative Agent and each Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) payable or paid by, or required to be withheld from a payment to, the Administrative Agent or such Lender, as the case may be, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any Lender seeking indemnity pursuant to this Section 2.15(c) shall promptly notify the Borrower of the imposition of the relevant Indemnified Taxes or Other Taxes. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.15, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.15(e)(ii)(1), (ii)(2) and (ii)(4) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the foregoing:

(1) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from



time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(2) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code shall to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(A) in the case of such a Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty,

(B) executed copies of IRS Form W-8ECI,

(C) in the case of such a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit P-1 to the effect that such Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, or

(D) to the extent such Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-2 or Exhibit P-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit P-4 on behalf of each such direct and indirect partner;

(3) each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and



(4) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (4), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(ii) The Administrative Agent shall deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement, either: (1) two duly completed copies of IRS Form W-9, or (2) two duly completed copies of IRS Form W-8IMY, with the effect that the Borrower may make payments to the Administrative Agent, to the extent such payments are received by the Administrative Agent as an intermediary, without deduction or withholding of any Taxes imposed by the United States. The Administrative Agent, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 30 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses



arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (g).

(h) The agreements in this Section 2.15 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. For the avoidance of doubt, for purposes of this Section 2.15, the term “Requirements of Law” includes FATCA.

#### SECTION 2.16 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees, or of amounts payable under Section 2.13 or 2.15, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m. (New York City time)), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent (at the Direction of the Required Lenders), be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to such account as may be specified by the Administrative Agent. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment (other than payments on the SOFR Loans) under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate for the period of such extension. Except as otherwise expressly provided herein, all such payments shall be made in Dollars to such account as may be specified by the Administrative Agent.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due under any Facility, such funds shall be applied, (1) first, towards payment of interest and fees then due under such Facility, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (2) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans of a given Class resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and accrued interest thereon than the proportion received by any other Lender with outstanding Loans of the same Class, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of such Class to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class, *provided that* (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in



accordance with the express terms of this Agreement (including the application of funds arising from existence of a Defaulting Lender), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant or (C) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans of that Class or any increase in the Applicable Rate in respect of Loans. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Alternate Base Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(a), 2.04(b), 2.16(d) or 9.03(c), then the Administrative Agent may, in its discretion and in the order determined by the Administrative Agent (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and to be applied to, any future funding obligations of such Lender under any such Section.

(f) After the occurrence and during the continuation of an Event of Default, monies to be applied to the Obligations, whether arising from payments by the Loan Parties, realization on Collateral, set-off or otherwise, shall be allocated as follows (subject, in all respects, to the Carve-Out and the CCAA Administration Charge):

(i) First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Agents in their capacity as such, until paid in full;

(ii) Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them, until paid in full;

(iii) Third, to pay interest and principal due in respect of Term Loans, until paid in full;

(iv) Fourth, to pay all other Obligations that are due and payable, until paid in full; and



(v) Fifth, the balance, if any, as required by the intercreditor agreement(s) or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns)..

Amounts shall be applied to each category of Obligations set forth above until paid in full and then to the next category. If amounts are insufficient to satisfy a category, they shall be applied pro rata among the Obligations in the category. The allocations set forth in this Section 2.16(f) are solely to determine the rights and priorities of the Agents and Lenders as among themselves and may be changed by agreement among the Agents and all of the Lenders without the consent of any Loan Party.

#### SECTION 2.17 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority or other recipient for the account of any Lender pursuant to Section 2.15 or any event that gives rise to the operation of Section 2.21, then following request by the Borrower such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder affected by such event, or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the reasonable judgment of such Lender, such designation or assignment and delegation (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or Section 2.15 or mitigate the applicability of Section 2.21, as the case may be, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not be inconsistent with the internal policies of, or otherwise be disadvantageous in any material economic, legal or regulatory respect to, such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.13 or gives notice under Section 2.21, (ii) the Borrower is required to pay any additional amount to any Lender or to any Governmental Authority or other recipient for the account of any Lender pursuant to Section 2.15, or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment and delegation), *provided* that (A) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consents, in each case, shall not unreasonably be withheld or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued but unpaid interest thereon, accrued but unpaid fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (C) the Borrower or such assignee shall have paid (unless waived) to the Administrative Agent the processing and recordation fee specified in Section 9.04(b)(ii) and (D) in the case of any such assignment resulting from a claim for compensation under Section 2.13, payment required to be made pursuant to Section 2.15 or a notice given under Section 2.21, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment need not be a party thereto.



SECTION 2.18 Super Priority Nature of Obligations and Administrative Agent's Liens; Payment of Obligations. The priority of the Administrative Agent's Liens on the Collateral, claims and other interests shall be as set forth in the DIP Orders (and, for the avoidance of doubt, are subject to the Carve-Out and the CCAA Administration Charge). Subject to the terms of the DIP Orders, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, the Administrative Agent and the Lenders shall be entitled to immediate payment of such Obligations without application to or order of the Bankruptcy Court.

SECTION 2.19 Extension of Maturity Date. The Borrower may, with the consent of the Required Lenders and by notice to the Administrative Agent not later than the date that is 5 Business Days prior to the then-existing date set forth in clause (i) of the definition of Maturity Date, elect to extend such date to the date that is up to 1 month after such then-existing date (the "Extended Maturity Date").

(a) Upon such election (the "Extension Effective Date"), subject to the satisfaction (or waiver by the Required Lenders) of each of the following conditions, the date set forth in clause (i) of the definition of Maturity Date shall be extended to the Extended Maturity Date:

(i) The Borrower shall pay to the Administrative Agent, for the account of each Lender, a consent fee equal to 1.00% of the aggregate principal amount of the Term Loans held by such Lender on the date of such extension, with such fee payable in kind in additional amounts of Term Loans;

(ii) On and as of the Extension Effective Date, no Default or Event of Default shall have occurred and be continuing; and

(iii) Delivery of an updated Approved Budget.

(b) Notwithstanding anything to the contrary in this Section 2.19, the Borrower may extend the date set forth in clause (i) of the definition of Maturity Date no more than three times pursuant to this Section 2.19.

SECTION 2.20 Defaulting Lenders.

(a) General. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.02.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 9.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, [reserved]; third, [reserved]; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan under the relevant Facility in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the



Administrative Agent and the Borrower, to be held in a deposit account subject to an Account Control Agreement and released in order to satisfy obligations of that Defaulting Lender to fund Loans under the relevant Facility; sixth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Loan Party as a result of any judgment of a court of competent jurisdiction obtained by any Loan Party against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, subject to the last sentence of Section 2.09(e), to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction.

(iii) Certain Fees. That Defaulting Lender shall not be entitled to receive or accrue any commitment fee pursuant to Section 2.10(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure.

(i) If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(ii) [Reserved].

SECTION 2.21 Illegality. If any Lender reasonably determines that any law has made it unlawful, or any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, the Term SOFR Rate (whether denominated in Dollars), or to determine or charge interest rates based upon the Term SOFR Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the Term SOFR Rate component of the Alternate Base Rate, the interest rate on such ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon three Business Days' notice from such Lender (with a copy to the Administrative Agent), prepay or (I) if applicable and such Loans are denominated in Dollars, convert all SOFR Loans denominated in Dollars of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, or (II), and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term SOFR Rate, the Administrative Agent shall during the period of such suspension compute the



Alternate Base Rate applicable to such Lender without reference to the Term SOFR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate. Each Lender agrees to notify the Administrative Agent and the Borrower in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 2.22     [Reserved].

SECTION 2.23     [Reserved].

SECTION 2.24     [Reserved].

SECTION 2.25     [Reserved].

### ARTICLE III REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Lenders as of the Effective Date (after giving effect to the Transactions) that:

SECTION 3.01     Organization; Powers. Each of Holdings, each Intermediate Parent (if any), the Borrower and each Restricted Subsidiary is (a) duly organized or incorporated (as applicable), validly existing and in good standing (to the extent such concept exists in the relevant jurisdictions) under the laws of the jurisdiction of its organization, (b) subject to any restriction arising on account of Holdings', the Borrower's or any Subsidiary's status as a "debtor" under the U.S. Bankruptcy Code, has the corporate or other organizational power and authority to carry on its business as now conducted and subject to the entry of the DIP Order and the terms thereof, to execute, deliver and perform its obligations under each Loan Document to which it is a party, and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except in the case of clause (a) (other than with respect to any Loan Party), clause (b) (other than with respect to Holdings and the Borrower and any other Loan Party in the case of the execution and delivery of any Loan Document to which it is a party) and clause (c), where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02     Authorization; Enforceability. Subject to the entry of the DIP Order and the terms thereof, this Agreement and each other Loan Document has been duly authorized, executed and delivered by each of Holdings, each Intermediate Parent, the Borrower and each other Loan Party party thereto and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Holdings, such Intermediate Parent, the Borrower or such Loan Party, as the case may be, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03     Governmental and Third-Party Approvals; No Conflicts. Subject to the entry of the DIP Order and the terms thereof, the execution, delivery and performance of the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or third-party, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate



(i) the Organizational Documents of Holdings, the Borrower or any other Loan Party, or (ii) any Requirements of Law applicable to Holdings, the Borrower or any other Loan Party or any of its Restricted Subsidiaries, (c) will not violate or result in a default under any indenture or other agreement or instrument binding upon Holdings, the Borrower or any other Loan Party or any of its Subsidiaries or their respective assets, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder and (d) will not result in the creation or imposition of any Lien on any asset of Holdings, the Borrower or any other Loan Party or any of its Subsidiaries, except Liens created under the Loan Documents or otherwise permitted under Section 6.02, except (in the case of each of clauses (a), (b)(ii) and (c)) to the extent that the failure to obtain or make such consent, approval, registration, filing or action, or such violation, default or right as the case may be, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### SECTION 3.04      Financial Condition; No Material Adverse Effect.

(a) The Historical Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly indicated therein, including the notes thereto, and (ii) fairly present in all material respects the financial condition of the Borrower and its Restricted Subsidiaries as of the respective dates thereof and the consolidated results of their operations for the respective periods then ended in accordance with GAAP consistently applied during the periods referred to therein, except as otherwise expressly indicated therein, including the notes thereto.

(b) As of the Effective Date, all material written factual information (other than projections, estimates, other forward-looking information and information of a general economic nature or industry specific nature, the “Information”) that has been made available to any Lenders, the Specified Lender Advisors or the Administrative Agent, directly or indirectly, by, or at the request of, Holdings, the Borrower or any of its Subsidiaries or by any of their respective representatives on behalf of Holdings, the Borrower or any of its Subsidiaries, in connection with the Loans or other transactions contemplated hereby, when taken as a whole, after giving effect to all supplements and updates provided thereto, was correct in all material respects as of the date such Information, supplement or update was furnished to such Persons and did not, taken as a whole as of such date contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto); provided that, with respect to any projections, Holdings and the Borrower represent only that such projections, when taken as a whole, were prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered, it being understood that (i) such projections are merely a prediction as to future events and are not to be viewed as facts or a guarantee of performance, (ii) such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries and (iii) no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ significantly from the projected results and such differences may be material.

(c) [Reserved].

(d) Other than as disclosed in writing to the Specified Lender Advisors and/or the Term Lenders prior to the Effective Date, since the last day of the fiscal year ending closest to December 31, 2022, there has been no Material Adverse Effect.

#### SECTION 3.05      Properties; Insurance.

(a) Except for a default arising from the Chapter 11 Cases, each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary has good title to, or valid leasehold or subleasehold,



as applicable, interests in, all its real and personal property material to its business (including the Mortgaged Properties, if any), (i) free and clear of all Liens except for Liens permitted by Section 6.02 and (ii) except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, which such defects in title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Effective Date, Schedule 3.05 contains a true and complete list of all Material Real Property owned by the Borrower and its Subsidiaries.

(c) Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary maintains in effect insurance that complies, in all material respects, with the requirements of Section 5.07.

#### SECTION 3.06 Litigation and Environmental Matters.

(a) Except for the Chapter 11 Cases and the Canadian Recognition Proceeding, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Responsible Officer of Holdings or the Borrower, threatened in writing against or affecting Holdings, the Borrower or any Restricted Subsidiary that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) has, to the knowledge of a Responsible Officer of Holdings or the Borrower, any basis to reasonably expect that Holdings, the Borrower or any Restricted Subsidiary will become subject to any Environmental Liability.

SECTION 3.07 Compliance with Laws and Agreements. Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary is in compliance with (a) its Organizational Documents, (b) all Requirements of Law applicable to it or its property and (c) all indentures and other agreements and instruments binding upon it or its property, except, in the case of clauses (b) and (c) of this Section, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08 Investment Company Status. None of Holdings, the Intermediate Parents, the Borrower or any other Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended from time to time.

SECTION 3.09 Taxes. Except pursuant to an order of the Bankruptcy Court or pursuant to the U.S. Bankruptcy Code, Canadian Bankruptcy and Insolvency Law or except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary (a) have timely filed or caused to be filed all Tax returns required to have been filed and (b) have paid or caused to be paid all Taxes required to have been paid (whether or not shown on a Tax return) including in their capacity as tax withholding agents, except any Taxes (i) that are not overdue by more than 30 days or (ii) that are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Holdings, the Borrower or such Restricted Subsidiary, *provided* that Holdings, such Intermediate Parent, the Borrower or such Restricted Subsidiary, as the case may be, has set aside on its books adequate reserves therefor in accordance with GAAP.



### SECTION 3.10 ERISA.

(a) Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made or is reasonably expected to occur, (ii) no Plan has failed to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived, (iii) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (iv) neither any Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan and (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(c) With respect to any Foreign Pension Plan, as of the date hereof, except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) each such plan is in compliance with all requirements of law applicable and the respective requirements of the governing documents for such plan, (ii) none of any Loan Party or any of their Subsidiaries, Foreign Subsidiaries or any of their respective directors, officers, employees or agents has engaged in a transaction which would subject any Loan Party or any of its Subsidiaries or Foreign Subsidiaries, directly or indirectly, to a material tax or civil penalty, (iii) reserves have been established in the financial statements furnished to Lenders in respect of any unfunded liabilities in accordance with applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained, and (iv) the present aggregate value of accumulated benefit obligations of all Foreign Pension Plans did not, as of the most recent statements available, exceed the aggregate value of the assets for all such Foreign Pension Plans.

(d) No Loan Party has established, administered, sponsored, maintained or contributed to any Canadian Defined Benefit Plan and no Credit Party has any liability in respect of any Canadian Defined Benefit Plan, contingent or otherwise.

SECTION 3.11 Disclosure. As of the Effective Date, no report, financial statements, certificates or other written information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading, *provided* that, with respect to projected financial information, Holdings and the Borrower represent only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, it being understood that any such projected financial information relates to future events and are not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, no assurance can be given that any particular projected financial information will be realized and that actual results during the period or periods covered thereby may differ significantly from the corresponding projected financial information and such differences could be material.



SECTION 3.12     Subsidiaries. As of the Effective Date, Schedule 3.12 sets forth the name of each Subsidiary and the registered ownership interest of Holdings, each Intermediate Parent, the Borrower or another Subsidiary in each Subsidiary.

SECTION 3.13     Intellectual Property; Licenses, Etc. Each of Holdings, the Intermediate Parents, the Borrower and each Restricted Subsidiary owns, licenses or possesses the right to use all of the Intellectual Property that is reasonably necessary for the operation of its business as currently conducted, and, without conflict with the rights of any Person, except to the extent the failure to have any such rights or such conflicts, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Holdings, the Borrower or any Restricted Subsidiary do not and will not, in the operation of their businesses as currently conducted, infringe upon, misuse, dilute, misappropriate or otherwise violate any Intellectual Property rights held by any Person except for such infringements, misuses, dilutions, misappropriations or violations that, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the Intellectual Property owned by Holdings, the Intermediate Parents, the Borrower or any of the Restricted Subsidiaries is pending or, to the knowledge of any Responsible Officer of Holdings or the Borrower, threatened in writing against Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.14     [Reserved].

SECTION 3.15     [Reserved].

SECTION 3.16     Federal Reserve Regulations. None of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, to purchase or carry any margin stock or to refinance any Indebtedness originally incurred for such purpose, or for any other purpose that entails a violation (including on the part of any Lender) of the provisions of Regulations U or X of the Board of Governors.

SECTION 3.17     Use of Proceeds. The Borrower will use the proceeds of the Loans made on the Effective Date to (i) pay fees, interest and other amounts payable under this Agreement, (ii) provide working capital for, and for other general corporate purposes of, the Borrower and its Subsidiaries, including for funding the Carve-Out, the CCAA Administration Charge and payment of any Adequate Protection Obligations, in each case of clauses (i) and (ii), in accordance with, and subject to, the DIP Order and the Approved Budget (subject to any Permitted Variance), and (iii) in the case of the Roll-Up Loans in exchange for (and to satisfy and discharge) Prepetition Priority Loans.

SECTION 3.18     PATRIOT Act, OFAC and FCPA.

(a)     The Borrower will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of funding (i) any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (ii) any other transaction that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(b)     The Borrower and the Restricted Subsidiaries will not use the proceeds of the Loans directly, or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or



employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”) or any other applicable anti-corruption laws.

(c) None of Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries has, in the past three years, committed a violation of applicable Sanctions, Title III of the USA Patriot Act or the FCPA or any other applicable anti-corruption laws.

(d) None of Holdings, the Intermediate Parents, the Borrower or any of the Subsidiaries, or, to the knowledge of the Borrower, any director, officer, employee or agent of Holdings, the Intermediate Parents, the Borrower or any Restricted Subsidiary is an individual or entity currently on the list of Specifically Designated Nationals and Blocked Persons administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) or any other Sanctions list, nor is Holdings, the Borrower or any Restricted Subsidiary located, organized or resident in a country or territory that is the subject of comprehensive Sanctions.

### SECTION 3.19     Security Documents.

(a) Subject to the entry or execution thereof, the DIP Order and any applicable Security Documents creates in favor of the Collateral Agent (for the benefit of the Secured Parties), in each case, a legal, valid and enforceable security interest in and Liens on the Collateral described therein and proceeds thereof, which security interest and Lien shall be valid and perfected as of the Effective Date by entry of the DIP Order and/or execution of the applicable Security Document with respect to each Loan Party and which shall constitute a continuing security interest and Lien on the Collateral having priority over all other security interests and Liens on the Collateral and securing all the Obligations, other than as set forth in the DIP Order or the applicable Secured Documents. The Collateral Agent and Lenders shall not be required to file or record any financing statements, mortgages, notices of Lien or similar instruments, in any jurisdiction or filing office or to take any other action in order to validate, perfect or establish the priority of the security interest and Lien granted pursuant to the DIP Order.

(b) Pursuant to Section 364(c)(1) of the U.S. Bankruptcy Code, the Obligations of the Loan Parties shall at all times constitute allowed senior administrative expenses against each of the Loan Parties in the Chapter 11 Cases (without the need to file any proof of claim or request for payment of administrative expense), with priority over any and all other administrative expenses, adequate protection claims, diminution claims and all other claims against the Loan Parties, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the U.S. Bankruptcy Code, and over any and all other administrative expense claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 of the U.S. Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment, which allowed claims shall for purposes of Section 1129(a)(9)(A) of the U.S. Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the U.S. Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Loan Parties and their estates and all proceeds thereof other than as set forth in the DIP Order.

(c) Except as otherwise expressly provided hereby or under any other Loan Documents, the provisions of the UK Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable UK Collateral Documents, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable perfected first priority Lien



(subject to Liens permitted by Section 6.02) on all right, title and interest of the applicable Subsidiary Loan Parties, respectively, in the Collateral described therein.

#### SECTION 3.20 Bankruptcy Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance in all material respects with applicable law and proper notice thereof was given. Proper notice was also provided for (x) the motion seeking approval of the Loan Documents pursuant to the DIP Order and the application seeking approval of the Canadian Interim Orders and (y) the hearing for the approval of the DIP Order and the Canadian Interim Orders.

(b) After entry of the Interim Order (and the Final Order when applicable) and pursuant to and to the extent provided in the Interim Order and the Final Order, as applicable, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral, (i) encumbered by no Liens other than Liens permitted by Section 6.02 and (ii) prior and superior to any other Person or Lien pursuant to Section 364(d)(1) of the Bankruptcy Code, in each case, other than the Carve-Out and the CCAA Administration Charge and subject to the priorities set forth in the Interim Order or the Final Order, as applicable. After the entry of the Canadian Supplemental Order (and the Canadian Final Order when applicable), and pursuant to and to the extent provided in the Canadian Supplemental Order and the Canadian Final Order, as applicable, the Obligations of the Canadian Guarantors hereunder will be secured by a valid and perfected first priority Lien on all of the Collateral located in Canada, (i) encumbered by no Liens other than the Permitted Liens and (ii) prior and superior to any other Person or Lien, in each case, other than the Carve-Out and the CCAA Administration Charge.

(c) The Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (with respect to the period on and after the entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without the Administrative Agent and Required Lenders' consent (which consent of the Required Lenders may be communicated via a Direction of the Required Lenders). The Canadian Supplemental Order (with respect to the period prior to the entry of the Canadian Final Order) or the Canadian Final Order (with respect to the period on and after the entry of the Canadian Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without Administrative Agent and Required Lender consent (which consent of the Required Lenders may be communicated via an email from either of the Specified Lender Advisors).

(d) A true and complete copy of the initial budget, as agreed to with the Required Lenders as of the Effective Date, is attached as Schedule 3.20 hereto (the "Initial Budget").

#### ARTICLE IV CONDITIONS

SECTION 4.01 Effective Date. The effectiveness of this Agreement and the obligations of each Lender to make Initial Term Loans (or to be deemed to have made Roll-Up Loans) on the Effective Date is subject to the satisfaction or waiver by the Required Lenders in their respective sole discretion and, with respect to any condition affecting the rights and duties of the Administrative Agent, the Administrative Agent, any which waiver by the Required Lenders and the satisfaction of the Required Lenders, with any document described in clauses (a)-(l) below, as applicable, which may be communicated by a Direction of the Required Lenders, of the following conditions:



(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement and the Guarantee Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed counterpart of this Agreement) that such party has signed a counterpart of this Agreement and the Guarantee Agreement.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Kirkland & Ellis LLP, New York counsel for the Loan Parties, Polsinelli PC, Missouri counsel to the Loan Parties and Gowling WLG (Canada) LLP, Canadian counsel for the Loan Parties. The Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received a certificate of each Loan Party, dated the Effective Date, substantially in the form of Exhibit G-1 with appropriate insertions, executed by any Responsible Officer of such Loan Party, and including or attaching the documents referred to in paragraph (d) of this Section.

(d) The Administrative Agent shall have received a copy of (i) each Organizational Document of each Loan Party certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the Responsible Officers of each Loan Party executing the Loan Documents to which it is a party, (iii) resolutions of the Board of Directors and/or similar governing bodies of each Loan Party approving and authorizing the execution, delivery and performance of Loan Documents to which it is a party, certified as of the Effective Date by its secretary, an assistant secretary or a Responsible Officer as being in full force and effect without modification or amendment, and (iv) a good standing certificate (to the extent such concept exists) from the applicable Governmental Authority of each Loan Party's jurisdiction of incorporation, organization or formation.

(e) The Agents shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on or prior to the Effective Date, including the fees of the Specified Lender Advisors, to the extent invoiced prior to the Effective Date (except as otherwise reasonably agreed by Borrower), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel including the fees of Gibson, Dunn & Crutcher LLP, ArentFox Schiff LLP, Bryan Cave Leighton Paisner LLP, Gowling WLG (Canada) Limited, Nassiry Law and Goodmans LLP) required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) Subject to Schedule 5.14, the Collateral and Guarantee Requirement shall have been satisfied.

(g) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received the Historical Financial Statements.

(h) The Administrative Agent shall have received a Borrowing Request to be made on the Effective Date meeting the requirements of Section 2.03.

(i) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received, prior to the Effective Date, all documentation and other information about the Loan Parties that shall have been reasonably requested in writing at least one day prior to the Effective Date and that the Administrative Agents or the Specified Lender Advisors on behalf of the Lenders have reasonably determined is required by United States regulatory authorities under applicable "know your customer" and anti- money laundering rules and regulations, including without limitation Title III of the USA Patriot Act.



(j) The Borrower shall have delivered to the Administrative Agent a certificate dated as of the Effective Date, to the effect set forth in Section 4.01(k), (o) and (p).

(k) The representations and warranties contained in Article III shall be true and correct in all material respects on and as of the Effective Date; provided that (A) in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or for the respective period, as the case may be and (B) if any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, (1) the definition thereof shall be the definition of “Material Adverse Effect” for purposes of the making or deemed making of such representation and warranty on, or as of, the Effective Date (or any date prior thereto) and (2) such representation and warranty shall be true and correct in all respects.

(l) The Administrative Agent and Specified Lender Advisors on behalf of the Lenders shall have received the following documents in form and substance satisfactory to the Required Lenders, duly executed and dated the Effective Date:

- (i) the Escrow Agreement;
- (ii) the Forbearance Agreement;
- (iii) the Canadian Collateral Agreement; and
- (iv) the Approved Budget;

(m) (i) (a) The Bankruptcy Court shall have entered the Interim Order, no later than five (5) Business Days after the Petition Date, and such order shall be in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via a Direction of the Required Lenders) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent), be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (which consent may be communicated via a Direction of the Required Lenders) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) and (b) the Canadian Bankruptcy Court shall have entered the Canadian Interim Orders no later than 4 Business Days following the Petition Date, and such orders shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion, be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent); (ii) the Lenders shall have received drafts of the “first day” pleadings for the Chapter 11 Cases and all materials for the Canadian Recognition Proceeding, in each case, in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via a Direction of the Required Lenders), not later than a reasonable time in advance of the Petition Date for the Administrative Agent’s and Lenders’ counsel to review and analyze the same; (iii) all motions, orders (including the “first day” orders) and other documents to be filed with or submitted to the Bankruptcy Court on the Petition Date or the Canadian Bankruptcy Court on the CCAA Filing Date shall be in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via a Direction of the Required Lenders); and (iv) (a) all “first day” orders shall have been approved and entered by the Bankruptcy Court except as otherwise agreed by the Required Lenders (which agreement may be communicated via a Direction of the Required Lenders), and (b) the Canadian Interim Orders shall have been approved and entered by the Canadian Bankruptcy Court except as otherwise agreed by the Required Lenders.



(n) The Prepetition Existing Administrative Agent and the Required Lenders (as defined under the Prepetition Existing Credit Agreement) shall have each consented to the use of collateral or received adequate protection (if applicable) in respect of the liens securing their respective obligations pursuant to the Interim Order.

(o) After due inquiry, each Loan Party is unaware of any fraudulent activities in connection with its business.

(p) As of the Effective Date, no Event of Default or Default shall have occurred and be continuing.

(q) The RSA shall not have been terminated and shall be in full force and effect and no default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof.

SECTION 4.02 Conditions to Withdrawal of Escrow Term Loans from Loan Proceeds Account. The obligations of the Lenders to permit any Withdrawal after the Effective Date (each, a “Credit Event”) are subject to the satisfaction or waiver by the Required Lenders in their respective sole discretion and, with respect to any condition affecting the rights and duties of the Administrative Agent, the Administrative Agent, any which waiver by the Required Lenders and the satisfaction of the Required Lenders, of the following additional conditions precedent, as applicable, which may be communicated by a Direction of the Required Lenders (other than, in each case, any Credit Event that is to solely fund the Carve-Out Reserves (as such term is defined in the DIP Order), which shall only be subject to the delivery of the condition precedent set forth in clause (a) below)):

(a) With respect to each Credit Event, the Administrative Agent shall have received a written Withdrawal Notice by no later than 3:00 p.m. New York City time on the Monday (or, if such Monday is not a Business Day, the first Business Day preceding such day) of the week for a proposed funding of such Credit Event on the Thursday (or, if such Thursday is not a Business Day, the first Business Day preceding such day) of such week;

(b) At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing (including with respect to compliance with the Approved Budget (subject to Permitted Variances) and the Milestones) and the Loan Parties shall be in compliance with the Minimum Liquidity Covenant;

(c) Without giving effect to the Credit Event and the use of proceeds thereof, the Borrower was in compliance with Section 5.21 as of the most recently ended testing period for which reports were delivered under Section 5.21;

(d) The RSA shall not have been terminated and shall be in full force and effect and no default or event of default by any of the Loan Parties shall have occurred and be continuing (with all applicable grace periods having expired) under the RSA, except as otherwise waived in accordance with the terms thereof;

(e) The minimum amount of such Credit Event shall not be less than the Borrowing Minimum and shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple;

(f) All representations the representations of the Loan Parties set forth in this Agreement shall, in each case, be true and correct in all material respects as of the Effective Date or the date of such Credit Event, as applicable (or true and correct in all material respects as of a specified date, if



earlier) (except to the extent such representations and warranties are qualified by “materiality” or “Material Adverse Effect,” in which case such representations and warranties shall be true and correct in all respects);

(g) No motion, pleading or application seeking relief affecting the provision of the financing contemplated hereunder in a manner that is adverse to the Lenders, in their capacities as such, shall have been filed in the Bankruptcy Court by any Loan Party without the prior written consent of the Administrative Agent (at the Direction of the Required Lenders) or Escrow Agent (at the Direction of the Required Lenders);

(h) After due inquiry, each Loan Party is unaware of any fraudulent activities in connection with its business;

(i) The Administrative Agent and the Specified Lender Advisors on behalf of the Lenders shall have received the applicable Approved Budget; provided that, notwithstanding anything to the contrary, in no event shall the conditions precedent for any Credit Event (other than any Credit Event that is to solely fund the Carve-Out Reserves (as such term is defined in the DIP Order)) be deemed satisfied unless the Submitted Budget with respect to such Credit Event has been approved by and be in form and substance satisfactory to the Required Lenders;

(j) The Agents shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on such date, including the fees of the Specified Lender Advisors, to the extent invoiced prior to such Credit Event, as applicable (except as otherwise reasonably agreed by Borrower), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party under any Loan Document;

(k) The Final Order shall have been entered by the Bankruptcy Court, such order shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent) in their sole discretion and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent the prior written consent of the Required Lenders (and with respect to amendments, modifications or supplements that affect the rights or duties of the Administrative Agent, the Administrative Agent).

(l) The Collateral Agent, for the benefit of the Secured Parties, shall have valid and perfected Liens on all Collateral, to the extent contemplated hereby, and pursuant to the other Loan Documents, including the applicable DIP Order, the Canadian DIP Recognition Order and the Canadian Collateral Agreement.

(m) The Loan Parties shall be in compliance with the Interim Order, the Canadian DIP Recognition Order and the Final Order, as the case may be.

(n) The Loan Parties shall be in compliance in all material respects with each “first day” order and “second day” order then in effect.

(o) All “second day” orders approving on a final basis the relief granted under any “first day” orders shall have been entered by the Bankruptcy Court, shall be satisfactory to the Required Lenders in their sole discretion, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as reasonably acceptable to the Required Lenders.



On any date on which the Loans shall have been accelerated, any amounts remaining in the Loan Proceeds Account, as the case may be, may be applied by the Administrative Agent (at the Direction of the Required Lenders) to reduce the Loans then outstanding, in accordance with Section 2.16. None of the Loan Parties shall have (and each Loan Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Loan Proceeds Account upon the occurrence and during the continuance of any Default or Event of Default. It is understood and agreed that the Administrative Agent may not deliver a "Termination Notice" (as defined and under the Escrow Agreement) unless and until an Event of Default has occurred and is continuing.

Notwithstanding the foregoing, if the Required Lenders determine that the Borrower has failed to satisfy any of the conditions precedent set forth in Section 4.02 (with respect to any Credit Event) of this Agreement for a Withdrawal Notice and so advise the Administrative Agent in writing, the Administrative Agent shall decline to fund such Withdrawal Notice.

The acceptance by the Borrower of the Loans or proceeds of a Credit Event shall conclusively be deemed to constitute a representation by the Borrower that each of the conditions precedent set forth in this Section 4.01 and 4.02, as applicable, shall have been satisfied in accordance with its respective terms or shall have been irrevocably waived by the applicable relevant Person; *provided, however*, that the making of any such Credit Event (regardless of whether the lack of satisfaction was known or unknown at the time), shall not be deemed a modification or waiver by the Administrative Agent, any Lender or other Secured Party of the provisions of this Article IV on any future occasion or operate as a waiver of (i) the right of Administrative Agent and Lenders to insist upon satisfaction of all conditions precedent with respect to any subsequent Credit Event, (ii) any Default or Event of Default due to such failure of conditions or otherwise or (iii) any rights of the Administrative Agent or any party as a result of any such failure of the Loan Parties to comply.

## ARTICLE V AFFIRMATIVE COVENANTS

Until the Discharge of DIP Obligations has occurred, the principal of and interest on each Loan and all fees, expenses and other amounts (other than contingent amounts not yet due) payable under any Loan Document shall have been paid in full, each of Holdings and the Borrower covenants and agrees with the Lenders that:

**SECTION 5.01     Financial Statements and Other Information.** The Borrower will furnish to the Administrative Agent, on behalf of each Lender:

(a) commencing with the fiscal year ending December 31, 2023, on or before the date on which such financial statements are required or permitted to be filed with the SEC (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 120 days after the end of such fiscal year), audited consolidated balance sheet and audited consolidated statements of operations, comprehensive income (loss), stockholders' equity (or, to the extent such fiscal year ends prior to the Effective Date, parent net investment) and cash flows of the Borrower as of the end of and for such fiscal year, and related notes thereto, setting forth in each case, in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP, PricewaterhouseCoopers LLP or any other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (other than any exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, (A) an upcoming maturity date of any Indebtedness under this Agreement or Material Indebtedness occurring within one year from the time such opinion is delivered or (B) any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial



statements present fairly in all material respects the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of the end of and for such year on a consolidated basis in accordance with GAAP consistently applied;

(b) commencing with the financial statements for the fiscal quarter ending March 31, 2023 on or before the date on which such financial statements are required or permitted to be filed with the SEC with respect to each of the first three fiscal quarters of each fiscal year of the Borrower (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 60 days after the end of each such fiscal quarter), unaudited consolidated balance sheet and unaudited consolidated statements of operations, comprehensive income (loss) and cash flows of the Borrower as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case, in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year (in each case, other than comparisons to financial statements in prior periods that were not required to be delivered hereunder), all certified by a Financial Officer as presenting fairly in all material respects the financial position and results of operations and cash flows of the Borrower and the Subsidiaries as of the end of and for such fiscal quarter and such portion of the fiscal year on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes and which may exclude the effects of purchase accounting with respect to the Transactions or any Permitted Investment or similar Investment permitted under this Agreement;

(c) within 30 days after the end of each month, commencing with the month ending May 31, 2023, the consolidated balance sheet of the Borrower as at the end of such month and the related consolidated statements of income of the Borrower for such month; and

(d) not later than five days after any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) [reserved] and (iii) in the case of financial statements delivered under paragraph (a) above, setting forth a reasonably detailed calculation of the Net Proceeds received during the applicable period by or on behalf of the Borrower or any Subsidiary in respect of any event described in clause (a) of the definition of the term "Prepayment Event" and the portion of such Net Proceeds that has been used to prepay the Loans in accordance with Section 2.09(b);

(e) commencing with the fiscal year ending December 31, 2024, not later than 120 days after the commencement of each fiscal year of the Borrower, a detailed consolidated budget for the Borrower and its Subsidiaries for such fiscal year (including a projected consolidated balance sheet and consolidated statements of projected operations and cash flows as of the end of and for such fiscal year and setting forth the material assumptions used for purposes of preparing such budget) in the form customarily provided by management of the Borrower (or otherwise provided to the Investors);

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and registration statements (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) filed by Holdings, the Borrower or any Subsidiary (or, if the Borrower is a subsidiary of the IPO Entity, the IPO Entity) with the SEC or with any national securities exchange; and

(g) reasonably promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent on its own behalf or on behalf of any Lender may reasonably request in writing.



(h) within 30 days after the end of each month, a report relating to such month (a “KPI Report”) containing the key performance indicators set forth in the form of such report agreed with the Specified Lender Advisors prior to the Effective Date and delivered with respect to May 31, 2023 pursuant to Section 4.01(l).

(i) at the request of the Specified Lender Advisors, a report containing a summary of accounts payable and aging;

(j) deliver to the Administrative Agent and the Specified Lender Advisors copies of all monthly reports, projections, or other written information with respect to each of the Loan Parties’ business or financial condition or prospects (as well as all pleadings, motions, orders applications and judicial information) filed by or on behalf of the Borrower with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case or Canadian Recognition Proceeding) or the Committee, at the time such document is filed with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case or Canadian Recognition Proceeding) or the Committee, as applicable; provided, however, that such reports, projections, or other written information required to be delivered pursuant to this clause (j) shall be deemed delivered to the Administrative Agent and the Specified Lender Advisors for purposes of this Agreement when such reports, projections or other written information is filed with the Bankruptcy Court.

Notwithstanding the foregoing, the obligations in paragraphs (a), (b), (c) and (i) of this Section 5.01 may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the Form 10-K or 10-Q (or the equivalent), as applicable, of the Borrower (or a parent company thereof) filed with the SEC or with a similar regulatory authority in a foreign jurisdiction or (B) the applicable financial statements of Holdings (or any Intermediate Parent or any direct or indirect parent of Holdings); *provided* that to the extent such information relates to a parent of the Borrower, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Borrower and its Subsidiaries on a stand-alone basis, on the other hand, and to the extent such information is in lieu of information required to be provided under paragraph (a) of this Section 5.01, such materials are accompanied by a report and opinion of KPMG LLP, PricewaterhouseCoopers LLP or any other independent registered public accounting firm of nationally recognized standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than any exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, (A) an upcoming maturity date of any Indebtedness under this Agreement or Material Indebtedness occurring within one year from the time such opinion is delivered or (B) any potential inability to satisfy a financial maintenance covenant on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of the end of and for such year on a consolidated basis in accordance with GAAP consistently applied.

Documents required to be delivered pursuant to paragraphs (a), (b), (c), (f) or (i) (to the extent any such documents are included in materials otherwise filed with the SEC) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earlier of the date (A) on which the Borrower posts such documents, or provides a link thereto, on the Borrower’s website on the Internet or (B) on which such documents are posted on the Borrower’s behalf on IntraLinks/IntraAgency or another website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) the Borrower shall deliver such documents to the Administrative Agent upon its



reasonable request until a written notice to cease delivering such documents is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and upon its reasonable request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Company Materials”) by posting the Company Materials on IntraLinks or another similar electronic system (the “Platform”) and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities.

The Borrower hereby agrees that it will, upon the Administrative Agent’s reasonable request, identify that portion of the Company Materials that may be distributed to the Public Lenders and that (i) all such Company Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (ii) by marking Company Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Company Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Holdings, the Borrower or their respective securities for purposes of United States federal and state securities laws (*provided, however*, that to the extent such Company Materials constitute Information, they shall be treated as set forth in Section 9.12); (iii) all Company Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (iv) the Administrative Agent shall be entitled to treat any Company Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

SECTION 5.02 Notices of Material Events. Promptly after any Responsible Officer of Holdings or the Borrower obtains actual knowledge thereof, Holdings or the Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of Holdings or the Borrower, affecting the Borrower or any of its Subsidiaries or the receipt of a written notice of an Environmental Liability or the occurrence of an ERISA Event or a Foreign Plan Event, in each case either, individually or when combined with other such events, could reasonably be expected to result in a Material Adverse Effect; and
- (c) the occurrence of any event that, individually or when combined with other such events, has resulted in or could reasonably be expected to result in a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.



SECTION 5.03      Information Regarding Collateral.

(a) Holdings or the Borrower will furnish to the Administrative Agent promptly prior written notice of any change (i) in any Loan Party's legal name (as set forth in its certificate of organization or like document), or (ii) in the jurisdiction of incorporation or organization of any Loan Party or in the form of its organization.

(b) Not later than five days after delivery of financial statements pursuant to Section 5.01(a) (or such later date as agreed by the Administrative Agent (acting at the Direction of the Required Lenders)), Holdings or the Borrower shall deliver to the Administrative Agent a certificate executed by a Responsible Officer of Holdings or the Borrower (i) [reserved], (ii) identifying any wholly-owned Subsidiary that has become, or ceased to be, a Material Subsidiary during the most recently ended fiscal year and (iii) certifying that all notices required to be given prior to the date of such certificate by Section 5.03 or 5.11 have been given.

SECTION 5.04      Existence; Conduct of Business. Each of Holdings and the Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, the patents, copyrights, trademarks, trade names and other Intellectual Property material to the conduct of its business, in each case (other than the preservation of the existence of Holdings and the Borrower) to the extent that the failure to do so could reasonably be expected to have a Material Adverse Effect, *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03 or any Disposition permitted by Section 6.05.

SECTION 5.05      Payment of Taxes, etc. Subject to the U.S. Bankruptcy Code, the terms of the DIP Order and any required approval by the Bankruptcy Court (it being understood that no Debtor shall be obligated to make any payments hereunder that would result in a violation of any applicable law, including the U.S. Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payment), Holdings and the Borrower will, and will cause each Restricted Subsidiary to, timely file any Tax returns and pay its obligations in respect of all Taxes before the same shall become delinquent or in default, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings or (ii) the failure to make a filing or payment could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 5.06      Maintenance of Properties. The Borrower will, and will cause each Restricted Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.07      Insurance.

(a) The Borrower will, and will cause each Restricted Subsidiary to, maintain, with insurance companies that the Borrower believes (in the good faith judgment of the management of the Borrower) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance in at least such amounts (after giving effect to any self-insurance which the Borrower believes (in the good faith judgment of management of the Borrower) is reasonable and prudent in light of the size and nature of its business) and against at least such risks (and with such risk retentions) as the Borrower believes (in the good faith judgment of the management of the Borrower) are reasonable and prudent in light of the size and nature of its business; and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. Each such policy of insurance maintained by a Loan Party shall (i) name the Administrative Agent, on behalf of the Lenders, as



an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable/mortgagee clause or endorsement that names Administrative Agent, on behalf of the Lenders, as the loss payee/mortgagee thereunder.

(b) If any portion of the improvements on any Mortgaged Property subject to FEMA rules and regulations is at any time located in an area identified by FEMA (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto, the “Flood Insurance Laws”), then the Borrower shall, or shall cause the relevant Loan Party to, (i) maintain or cause to be maintained, flood insurance sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance, which evidence complies with applicable Flood Insurance Laws and rules and regulations promulgated pursuant thereto.

SECTION 5.08 Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each Restricted Subsidiary to, maintain proper books of record and account in which entries that are full, true and correct in all material respects and are in conformity with GAAP (or applicable local standards) consistently applied shall be made of all material financial transactions and matters involving the assets and business of Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries, as the case may be. The Borrower will, and will cause the Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; *provided* that, excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise visitation and inspection rights of the Administrative Agent and the Lenders under this Section 5.08 and the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default, which visitation and inspection shall be at the reasonable expense of the Borrower; *provided further*, that (a) when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice and (b) the Administrative Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower’s independent public accountants.

SECTION 5.09 Compliance with Laws. Subject to the DIP Order, the Borrower will, and will cause each Restricted Subsidiary to, comply with its Organizational Documents and all Requirements of Law with respect to it or its property (including, including without limitation, ERISA, applicable Environmental Laws and any foreign law, rules, regulations and orders of any Governmental Authority that relates to or governs Foreign Pension Plans as well as the Patriot Act, the FCPA all other applicable anti-corruption laws and applicable Sanctions), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.10 Use of Proceeds. The Borrower will use the proceeds of the Loans as set forth in Section 3.17.

SECTION 5.11 Additional Subsidiaries. If any additional direct or indirect Subsidiary of the Borrower is formed or acquired after the Effective Date and if such Subsidiary becomes a Debtor under the Chapter 11 Cases or any existing direct or indirect Subsidiary of the Borrower becomes a Debtor under the Chapter 11 Cases, within 5 Business Days after the date such Subsidiary becomes a Debtor under the Chapter 11 Cases, notify the Collateral Agent thereof and cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary. The Borrower shall and shall cause the Guarantors to take



any and all actions reasonably requested by the Administrative Agent or Required Lenders that they deem necessary or advisable to obtain or maintain a valid and perfected Lien with respect to the Collateral, all at the expense of the Loan Parties.

SECTION 5.12      Further Assurances.

(a) Each of Holdings and the Borrower will, and will cause each Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law and that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties.

(b) If, after the Effective Date, any Material Real Property is acquired by the Borrower or any other Loan Party or are held by any Subsidiary on or after the time it becomes a Loan Party pursuant to Section 5.11 (other than assets constituting Collateral under a Security Document that becomes subject to the Lien created by such Security Document upon acquisition thereof or constituting Excluded Assets), the Borrower will forthwith notify the Administrative Agent thereof, and, if requested by the Administrative Agent, the Borrower will cause such assets to be subjected to a Lien securing the Obligations and will take and cause the other Loan Parties to take, such actions as shall be necessary and reasonably requested by the Administrative Agent and consistent with the Collateral and Guarantee Requirement to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties and subject to last paragraph of the definition of the term “Collateral and Guarantee Requirement.”

SECTION 5.13      Ratings. Each of Holdings and the Borrower will use best efforts to cause (a) the Borrower to continuously have a public corporate credit rating from each of S&P and Moody’s within fifteen (15) days of the Effective Date (but not to maintain a specific rating) and (b) the credit facilities made available under this Agreement to be continuously rated by each of S&P and Moody’s (but not to maintain a specific rating) within fifteen (15) days of the Effective Date.

SECTION 5.14      Certain Post-Closing Obligations. Each of Holdings, the Borrower and each other Loan Party agrees that it will deliver, or will cause to be delivered, to the Administrative Agent the items described on Schedule 5.14 and complete, or cause to be completed, the actions described on Schedule 5.14, in each case, by the times specified on such Schedule 5.14 with respect thereto, or such later time as the Administrative Agent may agree (acting at the Direction of the Required Lenders). All conditions precedent, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.14 within the time periods required by this Section 5.14, rather than as elsewhere provided in the Loan Documents).

SECTION 5.15      [Reserved].

SECTION 5.16      Change in Business. Holdings, the Borrower and the Restricted Subsidiaries, taken as a whole, will not fundamentally and substantively alter the character of their business, taken as a whole, from the business conducted by them on the Effective Date and other business activities which are extensions thereof or otherwise incidental, reasonably related or ancillary to any of the foregoing.

SECTION 5.17      Changes in Fiscal Periods. The Borrower shall not make any change in its fiscal year; *provided, however,* that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Required Lenders (which approval may be communicated by means of a Direction of the Required Lenders), in which case, the Borrower and



the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 5.18 Bi-Weekly Lender Calls. On a bi-weekly basis, on the Thursday of each applicable week beginning with June 8, 2023 (at 11:00 a.m. New York City time) (or such other day of any week or time agreed to as among the Required Lenders and the Borrower), management of the Borrower shall hold a telephonic meeting with the Lenders, the Administrative Agent and its counsel and the Specified Lender Advisors to update the Lenders on financing results, operations, various business and legal matters, including status updates on key existing clients and key targets and vendors and, if applicable, any ongoing sale process(es), and each such call such include a customary question and answer session for the Lenders.

SECTION 5.19 Control Agreements.

(a) No later than June 26, 2023 at 11:59 p.m. New York City time (as such deadline may be extended by the Administrative Agent (acting at the Direction of the Required Lenders)), the Borrower shall cause each Loan Party to enter into an Account Control Agreement, as applicable, and cause each of the Liens on deposit accounts and securities accounts owned by Loan Parties (other than Excluded Accounts) to be perfected by “control” as defined in the UCC.

(b) Upon the establishment of any deposit account or securities account (other than Excluded Accounts), the Borrower and the Loan Parties shall concurrently enter into an Account Control Agreement and cause each of the Liens on such deposit accounts and securities accounts to be perfected by “control” as defined in the UCC.

(c) The Borrower shall manage all cash and Permitted Investments that are not in United States bank accounts in accordance with the Approved Budget and consistent with past practices.

SECTION 5.20 Milestones.

Solely in the event the RSA is terminated or expires, the Borrower shall, or shall cause, the actions and events set forth in the RSA to occur by the times and dates set forth therein as of the date the RSA is terminated or expires, as such actions and events may be waived, amended or modified at the Direction of the Required Lenders (each, a “Milestone” and collectively, the “Milestones”).

SECTION 5.21 Approved Budget.

(a) The use of Loans by the Loan Parties under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget (subject to Permitted Variances). The Approved Budget shall set forth, on a weekly basis, for the 13-week period covered thereby, the Budgeted Cash Receipts, Budgeted Disbursement Amounts, Budgeted Liquidity and Budgeted Borrower Professional Fees for the 13-week period commencing with the week that includes the Effective Date and shall be approved by, and be in form and substance satisfactory to, the Required Lenders (it being acknowledged and agreed that the form of Approved Budget set forth as Exhibit S hereto is approved by and satisfactory to such Lenders and is and shall be the Approved Budget (subject to the following proviso) unless and until replaced in accordance with terms of this Section 5.21); *provided*, that, notwithstanding anything to the contrary, the Borrower shall provide an updated budget in form and substance acceptable to the Required Lenders two Business Days prior to any Withdrawal from the Loan Proceeds Account (such budget, the “Submitted Budget”), and, to the extent such Submitted Budget is not in form and substance satisfactory to the Required Lenders in their sole discretion, no such updated, modified or supplemented budget shall be effective if Required Lenders object in writing (which objection may be communicated by means of a Direction of the Required Lenders) within two days of receipt and if no written objection is received within



two days of receipt, the Submitted Budget shall be deemed an Approved Budget unless and until replaced in accordance with the terms of this Section 5.21. The Approved Budget shall include a 13-week cash flow forecast, which shall (i) include line-item reporting, the nature and scope of which shall be satisfactory to the Required Lenders, (ii) otherwise be in form and substance satisfactory to, and subject to the approval of, the Required Lenders (or, with respect to the initial Approved Budget, all Lenders as of the Effective Date) (it being acknowledged and agreed that the form of the 13-week cash flow forecast provided by the Borrower to the Lenders prior to the Effective Date shall be deemed satisfactory), and (iii) update the 13-week cash flow forecast from the prior Approved Budget to add additional weeks to the forecast in order to present a 13-week forecast period.

(b) The Approved Budget shall be updated, modified or supplemented by the Borrower from time to time, including (i) on June 22, 2023 and (ii) at the end of each four (4) consecutive week period commencing on July 20, 2023,<sup>3</sup> and in the event that such updated, modified or supplemented budget is not in form and substance satisfactory to the Required Lenders in their sole discretion, no such updated, modified or supplemented budget shall be effective if Required Lenders object in writing (which objection may be communicated by means of a Direction of the Required Lenders) within five days (or, in connection with a Withdrawal, two days) of receipt and if no written objection is received within five days (or, in connection with a Withdrawal, two days) of receipt, the updated, modified or supplemented budget shall be deemed an Approved Budget; *provided*, however, that in the event the Required Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall constitute an immediate Event of Default once the period covered by the prior Approved Budget has terminated (and at all times thereafter the then current Approved Budget shall remain in effect unless and until a new Approved Budget is not objected to by the Required Lenders (which objection may be communicated by means of a Direction of the Required Lenders)). Each Approved Budget delivered to the Administrative Agent and the Specified Lender Advisors shall be accompanied by such supporting documentation as reasonably requested by the Required Lenders. Each Approved Budget shall be prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time of preparation thereof. All Approved Budgets will be made available to lenders on the public side data site.

(c) Commencing with the First Testing Period and for each Variance Testing Period thereafter, the Borrower shall not permit: (x) the Actual Cash Receipts to be less than Budgeted Cash Receipts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period; (y) Actual Disbursement Amounts (excluding Actual Borrower Professional Fees, vendor-related motions and capital expenditures) to exceed the Budgeted Disbursement Amounts (excluding Budgeted Borrower Professional Fees, budgeted vendor-related motions and budgeted capital expenditures) (each calculated on a cumulative basis as opposed to a line by line basis), in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period and (z) and (y) actual amounts disbursed for capital expenditures to exceed the budgeted amounts for capital expenditures, in each case, for such Variance Testing Period, by more than 15% for such Variance Testing Period (the “Permitted Variances”).

(d) On a bi-weekly basis, the Borrower shall deliver to the Administrative Agent and the Lenders on or before 5:00 p.m. New York City time on the Thursday of each applicable week commencing on June 22, 2023, a certificate which shall include such detail as is reasonably satisfactory to the Required Lenders, signed by a Responsible Officer of the Borrower (1) certifying that (i) the Loan Parties are in compliance with the covenants contained in Section 5.21(c) and (ii) no Default or Event of

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<sup>3</sup> NTD: Company and advisors have advised that a Thursday deliverable provides sufficient time to refresh actuals and align with other reporting.



Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (2) attaching an Approved Budget Variance Report, which shall be prepared by the Borrower as of the last day of the respective Variance Testing Period then most recently ended. Any such certificate will be made available to Lenders on the public side data site.

(e) The Lenders (i) may assume that the Loan Parties will comply with the Approved Budget (subject to Permitted Variances), (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders are estimates only, and the Loan Parties remain obligated to pay any and all Obligations in accordance with the terms of the Loan Documents regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Loan Document or other lending limits set forth therein.

SECTION 5.22 Specified Lender Advisors; Professional Services Firm. The Lenders shall be entitled to retain or continue to retain (either directly or through counsel) any Specified Lender Advisor as the Required Lenders may deem necessary to provide advice, analysis and reporting for the benefit of the Lenders. The Loan Parties shall pay all reasonable fees, charges and disbursements of each Specified Lender Advisor and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall use commercially reasonable efforts to cooperate with the Specified Lender Advisors in connection with the services the Specified Lender Advisors provide to the Lenders, including to promptly furnish to the Specified Lender Advisors the ordinary course monthly financial materials provided to the Board of Directors of Holdings or the Borrower (excluding, for the avoidance of doubt, any such materials that would adversely affect any legal privilege or that relate to the Lenders, the Loan Documents or other material debt financing arrangements; *provided* that the Borrower will use reasonable efforts to deliver such information in a manner that would not adversely affect such legal privilege) (it being understood that none of the foregoing shall be construed to override any existing confidentiality and/or other obligations owed by the Loan Parties to such of its advisors or any other Person, including with respect to the sharing of any such information with third parties).

The Lenders shall be entitled to retain or continue to retain (either directly or through counsel) a professional services firm that is acceptable to the Required Lenders (which may be communicated by a Direction of the Required Lenders) to help analyze and negotiate the Loan Parties' lease portfolio (such firm, the "PSF"). The Loan Parties shall pay all reasonable fees, charges and disbursements of PSF and all such fees and expenses shall constitute Obligations and be secured by the Collateral. The Loan Parties (whether directly or, as appropriate, through their relevant advisors) shall use commercially reasonable efforts to cooperate with the PSF in connection with the services the PSF provides to the Lenders (it being understood that none of the foregoing shall be construed to override any existing confidentiality and/or other obligations owed by the Loan Parties to such of its advisors or any other Person, including with respect to the sharing of any such information with third parties).

SECTION 5.23 Chief Restructuring Officer. The Borrower shall maintain a Chief Restructuring Officer (a "CRO") acceptable to the Required Lenders (which may be communicated by a Direction of the Required Lenders), at the Borrower's sole cost and expense; *provided* that, for the avoidance of doubt, the Required Lenders hereby consent to the appointment of Eric Koza as the CRO. The terms, including the scope of the CRO's engagement shall be reasonably acceptable to the Direction of the Required Lenders (which may be communicated by a Direction of the Required Lenders). The Borrower shall have such CRO engaged at all times while any of the Obligations are outstanding.



SECTION 5.24 Cash Management. Maintain the cash management of the Loan Parties in accordance in all material respects with the Cash Management Order.

SECTION 5.25 Debtor-in-Possession Obligations. Comply in all material respects in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the DIP Order, and any other order of the Bankruptcy Court or the Canadian Bankruptcy Court. Give, on a timely basis as specified in the applicable DIP Order, all notices required to be given to all parties specified in such DIP Order.

SECTION 5.26 Additional Bankruptcy Matters. Promptly provide the Administrative Agent, the Lenders and the Specified Lender Advisors with updates of any material developments in connection with the Loan Parties' reorganization efforts under the Chapter 11 Cases or the Canadian Bankruptcy Court, whether in connection with the sale of all or substantially all of the Borrower's and its Subsidiaries' consolidated assets, the marketing of any Loan Parties' assets, the formulation of bidding procedures, an auction plan, and documents related thereto, or otherwise.

SECTION 5.27 Deed of Hypothec. No later than June [26], 2023 at 11:59 p.m. New York City time (as such deadline may be extended by the Administrative Agent (acting at the Direction of the Required Lenders)), the Borrower shall cause Cyxtera Communications Canada, ULC to enter into the Deed of Hypothec, and shall provide to the Administrative Agent evidence that such Deed of Hypothec has been registered with the Register of Personal and Moveable Real Rights (Québec).

## ARTICLE VI NEGATIVE COVENANTS

Until the Discharge of DIP Obligations has occurred, each of Holdings and the Borrower covenants and agrees with the Lenders that:

### SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) Holdings and the Borrower will not, and will not permit any Restricted Subsidiary or Intermediate Parent to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries under the Loan Documents;

(ii) Indebtedness outstanding on the Petition Date in respect of the Prepetition Existing Credit Agreement in an aggregate principal amount of \$[ \_ ]<sup>4</sup> or listed on Schedule 6.01 as long as such Indebtedness is subordinated in right of payment pursuant to the Forbearance Agreement;

(iii) Guarantees by Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries in respect of Indebtedness of the Borrower or any Restricted Subsidiary otherwise permitted hereunder; *provided* that (A) such Guarantee is otherwise permitted by Section 6.04, (B) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations pursuant to the Guarantee Agreement, (C) if the Indebtedness being Guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the

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<sup>4</sup> NTD: K&E please provide.



Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Indebtedness, (D) no Subsidiary that is not a Loan Party may guarantee Indebtedness of a Loan Party pursuant to this clause (iii), and (E) no Loan Party may guarantee any Indebtedness of a Subsidiary that is not a Loan Party pursuant to this clause (iii);

(iv) Indebtedness of Holdings, any Intermediate Parent, the Borrower or of any Restricted Subsidiary owing to any other Restricted Subsidiary, the Borrower, Holdings or any Intermediate Parent to the extent permitted by Section 6.04; *provided* that all such Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party shall be unsecured and subordinated to the Obligations on terms (A) at least as favorable to the Lenders as those set forth in the form of intercompany note attached as Exhibit H or (B) otherwise reasonably acceptable to the Administrative Agent (acting at the Direction of the Required Lenders);

(v) (A) Indebtedness (including Capital Lease Obligations) of the Borrower or any of the Restricted Subsidiaries financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; *provided* that such Indebtedness is incurred concurrently with or within 180 days after the applicable acquisition, construction, repair, replacement or improvement, and (B) [reserved]; *provided further*, that, at the time of any such incurrence of Indebtedness and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (v) shall not exceed \$2,500,000;

(vi) Indebtedness in respect of (A) Swap Agreements entered into to hedge or mitigate risks to which Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary has actual exposure (other than those in respect of shares of capital stock or other Equity Interests of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary) and (B) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary, in each case, that is not entered into for speculative purposes;

(vii) [reserved];

(viii) Indebtedness in respect of the Permitted Receivables Financing;

(ix) Indebtedness representing deferred compensation to employees of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(x) Indebtedness consisting of unsecured promissory notes issued by any Loan Party to current or former officers, directors and employees or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests in Holdings (or any direct or indirect parent thereof) permitted by Section 6.08(a);

(xi) [reserved];

(xii) [reserved];

(xiii) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements and Indebtedness arising from the



honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(xiv) Indebtedness of the Borrower and the Restricted Subsidiaries (which, for the avoidance of doubt, may be secured solely to the extent permitted by the provisions of Section 6.02); *provided* that at the time of the incurrence thereof and after giving Pro Forma Effect thereto, the aggregate principal amount of Indebtedness outstanding in reliance on this clause (xiv) shall not exceed \$2,500,000; *provided further*, that the aggregate principal amount of Indebtedness of which the primary obligor or a guarantor is a Restricted Subsidiary that is not a Loan Party outstanding in reliance on this clause (xiv) shall not exceed, at the time of incurrence thereof, \$1,000,000;

(xv) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xvi) (A) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created, or related to obligations or liabilities incurred, in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims and (B) Indebtedness of the Borrower or any of the Restricted Subsidiaries as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers or trade creditors issued in the ordinary course of business; *provided* that the aggregate principal amount of Indebtedness outstanding in reliance on this sub-clause (B) shall not exceed, at the time of incurrence thereof and after giving Pro Forma Effect thereto, \$1,000,000;

(xvii) obligations in respect of performance, bid, appeal and surety bonds and performance, bankers' acceptance facilities and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practice;

(xviii) [reserved];

(xix) [reserved];

(xx) [reserved];

(xxi) [reserved];

(xxii) [reserved];

(xxiii) [reserved];

(xxiv) [reserved];

(xxv) [reserved];

(xxvi) [reserved];



(xxvii) [reserved];

(xxviii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxvii) above.

(b) Holdings and each Intermediate Parent will not create, incur, assume or permit to exist any Indebtedness except Indebtedness created under subsections (i), (iii), (iv), (vi), (ix), (x), (xi), (xii), and (xiii) of this Section 6.01(a) and all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in the foregoing clauses.

(c) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, issue any preferred Equity Interests or any Disqualified Equity Interests, except in the case of Holdings, preferred Equity Interests that are Qualified Equity Interests.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (i) through (xxvii) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such item of Indebtedness (or any portion thereof) and will only be required to include the amount and type of such Indebtedness in one or more of the above clauses; *provided* that, notwithstanding anything to the contrary, Indebtedness incurred under the Prepetition Existing Credit Agreement shall be incurred pursuant to Section 6.01(a)(ii) and may not be reclassified or divided.

**SECTION 6.02**     Liens. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(i) any Lien created under the Loan Documents (as defined under the Prepetition Existing Credit Agreement), including Liens created under the Security Documents (as defined under the Prepetition Existing Credit Agreement) existing as of the Effective Date;

(ii) Permitted Encumbrances;

(iii) (A) Liens existing on Effective Date; *provided* that any Lien securing Indebtedness or other obligations shall only be permitted if set forth on Schedule 6.02 and any modifications, replacements, renewals or extensions thereof; *provided* that (1) such modified, replacement, renewal or extension Lien does not extend to any additional property other than (a) after-acquired property that is affixed or incorporated into the property covered by such Lien and (b) proceeds and products thereof, and (2) the obligations secured or benefited by such modified, replacement, renewal or extension Lien are permitted by Section 6.01;

(iv) Liens securing Indebtedness permitted under Section 6.01(a)(v); *provided* that (A) such Liens attach concurrently with or within 180 days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (B) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, except for accessions to such property and the proceeds thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof, and (C) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions to or proceeds of such assets) other than the assets subject to such Capital Lease Obligations; *provided further*, that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender;



(v) leases, non-exclusive licenses, subleases, sublicenses or easement interests granted to others that do not (A) interfere in any material respect with the business of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, taken as a whole or (B) secure any Indebtedness;

(vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(vii) Liens (A) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (B) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) and that are within the general parameters customary in the banking industry;

(viii) Liens (A) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.04 to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment or any Disposition permitted under Section 6.05 (including any letter of intent or purchase agreement with respect to such Investment or Disposition) or (B) consisting of an agreement to dispose of any property in a Disposition permitted under Section 6.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(ix) any Lien securing the Obligations pursuant to the DIP Order and/or any Liens permitted under the Cash Management Order;

(x) Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Loan Party, Liens granted by a Restricted Subsidiary that is not a Loan Party in favor of any Restricted Subsidiary that is not a Loan Party and Liens granted by a Loan Party in favor of any other Loan Party;

(xi) any Liens pursuant to the Receivables Order;

(xii) any interest or title of a lessor under leases (other than leases constituting Capital Lease Obligations), entered into by any of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(xiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale or purchase of goods by any of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(xiv) Liens deemed to exist in connection with Investments in repurchase agreements under clause (e) of the definition of the term "Permitted Investments";

(xv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xvi) Liens that are contractual rights of setoff (A) relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness, (B) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, any Intermediate Parent, the



Borrower and the Restricted Subsidiaries or (C) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(xvii) ground leases in the ordinary course of business in respect of real property on which facilities owned or leased by Borrower or any of its Restricted Subsidiaries are located;

(xviii) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(xix) Adequate Protection Liens;

(xx) other Liens; *provided* that at the time of incurrence of the obligations secured thereby (after giving Pro Forma Effect to any such obligations) the aggregate outstanding face amount of obligations secured by Liens existing in reliance on this clause (xx) shall not exceed \$2,500,000 and, if such Liens are secured by Collateral, such Liens shall be (i) junior in priority to the Liens securing the Obligations (except, in each case, to the extent such Liens (x) secure Capital Lease or purchase money Indebtedness and extend only to assets acquired with the proceeds of such Indebtedness and proceeds and products thereof, replacements, accession or additions thereto and improvements thereon or (y) are senior to the Liens securing the Secured Obligations by operation of law);

(xxi) [reserved];

(xxii) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

(xxiii) Liens on cash or Permitted Investments securing Swap Agreements not entered into for speculative purposes in the ordinary course of business submitted for clearing in accordance with applicable Requirements of Law; and

(xxiv) Liens on deposits taken by a Restricted Subsidiary that constitutes a regulated bank incurred in connection with the taking of such deposits.

For purposes of determining compliance with this Section 6.02, in the event that any Lien meets the criteria of more than one of the categories of Liens described in clauses (i) through (xxii) above, the Borrower shall, in its sole discretion, classify and reclassify or later divide, classify or reclassify such Lien (or any portion thereof) and will only be required to include the amount and type of such Lien in one or more of the above clauses; *provided* that, notwithstanding anything to the contrary, Liens securing the Prepetition Existing Credit Agreement shall be incurred pursuant to Section 6.02(i) and may not be reclassified or divided.

#### SECTION 6.03 Fundamental Changes.

(a) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that:

(i) any Restricted Subsidiary may merge with (A) the Borrower; *provided* that the Borrower shall be the continuing or surviving Person or (B) one or more other Restricted Subsidiaries; *provided* that when any Subsidiary Loan Party is merging or amalgamating with



another Restricted Subsidiary either (1) the continuing or surviving Person shall be a Subsidiary Loan Party or (2) if the continuing or surviving Person is not a Subsidiary Loan Party, the acquisition of such Subsidiary Loan Party by such surviving Restricted Subsidiary is permitted under Section 6.04;

(ii) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

(iii) any Restricted Subsidiary may make a Disposition of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (A) the transferee must be a Loan Party, (B) to the extent constituting an Investment, such Investment must be an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04 or (C) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for Fair Market Value and any promissory note or other non-cash consideration received in respect thereof is an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04;

(iv) the Borrower may merge, amalgamate or consolidate with any other Person; *provided* that the Borrower shall be the continuing or surviving Person;

(v) Holdings or any Intermediate Parent may merge, amalgamate or consolidate with any other Person (other than the Borrower), so long as no Event of Default exists after giving effect to such merger, amalgamation or consolidation; *provided* that (A) Holdings or Intermediate Parent, as applicable, shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger, amalgamation or consolidation is not Holdings or Intermediate Parent, as applicable, or is a Person into which Holdings or Intermediate Parent, as applicable, has been liquidated (any such Person, the “Successor Holdings”), (1) the Successor Holdings shall expressly assume all the obligations of Holdings or Intermediate Parent, as applicable, under this Agreement and the other Loan Documents to which Holdings or Intermediate Parent, as applicable, is a party pursuant to a supplement hereto or thereto in form and substance reasonably satisfactory to the Administrative Agent, (2) each Loan Party other than Holdings or Intermediate Parent, as applicable, unless it is the other party to such merger, amalgamation or consolidation, shall have reaffirmed, pursuant to an agreement in form and substance reasonably satisfactory to the Administrative Agent, that its Guarantee of and grant of any Liens as security for the Secured Obligations shall apply to the Successor Holdings’ obligations under this Agreement, (3) the Successor Holdings shall, immediately following such merger, amalgamation or consolidation, directly or indirectly own all Subsidiaries owned by Holdings or Intermediate Parent, as applicable, immediately prior to such transaction, (4) Holdings or Intermediate Parent, as applicable, shall have delivered to the Administrative Agent a certificate of a Responsible Officer and an opinion of counsel, each stating that such merger or consolidation complies with this Agreement and (5) [reserved]; *provided further*, that if the foregoing requirements are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings or Intermediate Parent, as applicable, under this Agreement and the other Loan Documents; *provided further*, that the Borrower agree to provide any documentation and other information about the Successor Holdings as shall have been reasonably requested in writing by any the Lender through the Administrative Agent that such Lender shall have reasonably determined is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including Title III of the USA Patriot Act;



(vi) any Restricted Subsidiary may merge, consolidate or amalgamate with any other Person in order to effect an Investment permitted pursuant to Section 6.04; *provided* that the continuing or surviving Person shall be a Restricted Subsidiary, which together with each of the Restricted Subsidiaries, shall have complied with the requirements of Sections 5.11 and 5.12

(vii) any Restricted Subsidiary may effect a merger, dissolution, liquidation consolidation or amalgamation to effect a Disposition permitted pursuant to Section 6.05; and

(viii) [reserved].

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, make or hold any Investment, except:

(a) Permitted Investments at the time such Permitted Investment is made;

(b) loans or advances to officers, directors and employees of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, in each case, in accordance with the Approved Budget, (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Equity Interests in Holdings (or any direct or indirect parent thereof) (*provided* that the amount of such loans and advances made in cash to such Person shall be contributed to the Borrower in cash as common equity or Qualified Equity Interests) and (iii) for purposes not described in the foregoing clauses (i) and (ii); *provided* that at the time of incurrence thereof and after giving Pro Forma Effect thereto the aggregate principal amount outstanding in reliance on clause (i) and clause (iii) above shall not to exceed \$1,000,000 in the aggregate at any time outstanding;

(c) Investments by Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary in any of Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary; *provided* that, in the case of any Investment by a Loan Party in a Restricted Subsidiary that is not a Loan Party, no Event of Default shall have occurred and be continuing or would result therefrom and shall not in the aggregate at any time outstanding exceed \$2,500,000 and shall be made solely using cash or Permitted Investments in the ordinary course of business consistent with past practice;

(d) Investments consisting of prepayments to suppliers in the ordinary course of business;

(e) Investments consisting of extensions of trade credit in the ordinary course of business;

(f) Investments (i) existing on the date hereof and set forth on Schedule 6.04(f) and any modification, replacement, renewal, reinvestment or extension thereof and (ii) Investments existing on the date hereof by Holdings, the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary and any modification, renewal or extension thereof; *provided* that the amount of the original Investment is not increased except by the terms of such Investment to the extent as set forth on Schedule 6.04(f) or as otherwise permitted by this Section 6.04;

(g) Investments in Swap Agreements not entered into for speculative purposes permitted under Section 6.01;

(h) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.05;



- (i) [reserved];
- (j) [reserved];
- (k) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers consistent with past practices;
- (l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, from financially troubled account debtors or in settlement of delinquent obligations of, or other disputes with, customers and suppliers or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;
- (m) loans and advances by Holdings, the Borrower or any Restricted Subsidiary to any direct or indirect parent of Holdings in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made by Holdings to such parent in accordance with Section 6.08(a); *provided* that, any such loans and advances will be deemed to reduce the relevant available capacity under the applicable sub-section of Section 6.08(a);
- (n) [reserved];
- (o) other Investments; *provided* that at the time any such Investment is made, the aggregate outstanding amount of all Investments made in reliance on this clause (o) together with the aggregate amount of all consideration paid in connection with all other Investments made in reliance on this clause (n) (including the aggregate principal amount of all Indebtedness assumed in connection with any such other acquisition), shall not exceed \$2,500,000; *provided further* that this clause (o) may not be used for Investments in Subsidiaries of Holdings that are not Loan Parties;
- (p) [reserved];
- (q) advances of payroll payments to employees in the ordinary course of business;
- (r) Investments and other acquisitions to the extent that payment for such Investments is made with Qualified Equity Interests of Holdings (or any direct or indirect parent thereof or the IPO Entity) in each case, to the extent not resulting in a Change of Control; *provided* that (i) [reserved] and (ii) any amounts used for such an Investment or other acquisition that are not Qualified Equity Interests of Holdings (or any direct or indirect parent thereof or the IPO Entity) shall otherwise be permitted pursuant to this Section 6.04;
- (s) [reserved]
- (t) [reserved];
- (u) Investments consisting of Liens, Indebtedness, fundamental changes, Dispositions, Restricted Payments and Restricted Debt Payments permitted (other than by reference to this Section 6.04) under Sections 6.02, 6.01, 6.03, 6.05, 6.08(a) and 6.08(b), respectively;
- (v) [reserved];



(w) contributions to a “rabbi” trust for the benefit of employees, directors, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower;

(x) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case, in the ordinary course of business;

(y) [reserved]; and

(z) Investments in Subsidiaries in the form of receivables and related assets required in connection with a Permitted Receivables Financing (including the contribution or lending of cash and cash equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or other Restricted Subsidiaries or to otherwise fund required reserves).

For purposes of determining compliance with this Section 6.04, with respect to any Investment initially made in reliance on a dollar-based criteria described in clauses (a) through (y) above in any Person that is not a Restricted Subsidiary at the time of, or after giving effect to, the making of such Investment, the Borrower may, in its sole discretion, reclassify such Investment (or any portion thereof) to clause (i) of this Section 6.04 upon such Person becoming a Restricted Subsidiary.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, Holdings, the Borrower, and each Subsidiary and any Intermediate Parent will comply with the Material Intellectual Property Provision.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, for purposes of this Section 6.04, the Foreign Guarantors will be deemed to be Subsidiaries of the Borrower that are not Loan Parties.

**SECTION 6.05     Asset Sales.** (a) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent, to, (i) sell, transfer, lease, license or otherwise dispose of any asset, including any Equity Interest owned by it or (ii) permit any Restricted Subsidiary to issue any additional Equity Interest in such Restricted Subsidiary (other than issuing directors’ qualifying shares, nominal shares issued to foreign nationals to the extent required by applicable Requirements of Law and other than issuing Equity Interests to Holdings, the Borrower or a Restricted Subsidiary in compliance with Section 6.04(c)) (each, a “Disposition”), except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property that is no longer used or useful, or economically practicable to maintain, in the conduct of the business of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned);

(b) Dispositions of inventory and other assets in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property;



(d) Dispositions of property to the Borrower or a Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Loan Party, then either (i) the transferee must be a Loan Party, (ii) to the extent constituting an Investment, such Investment must be an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04 or (iii) to the extent constituting a Disposition to a Restricted Subsidiary that is not a Loan Party, such Disposition is for Fair Market Value and any promissory note or other non-cash consideration received in respect thereof is an Investment in a Restricted Subsidiary that is not a Loan Party permitted by Section 6.04;

(e) Dispositions permitted by Section 6.03, Investments permitted by Section 6.04 (other than Section 6.04(u)), Restricted Payments permitted by Section 6.08(a), Restricted Debt Payments permitted by Section 6.08(b) and Liens permitted by Section 6.02, in each case, other than by reference to this Section 6.05;

(f) [reserved];

(g) Dispositions of Permitted Investments in the ordinary course of business;

(h) Dispositions of (A) accounts receivable in the ordinary course of business in connection with the collection or compromise thereof (excluding sales to factors or other third parties) and (B) accounts receivables and related assets pursuant to any Permitted Receivables Financing;

(i) leases, subleases, non-exclusive licenses or sublicenses, in each case, in the ordinary course of business and that, individually or in the aggregate, do not materially interfere with the business of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries;

(j) Dispositions of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event;

(k) Dispositions of property to Persons other than Holdings, the Borrower or any of the Restricted Subsidiaries (including the sale or issuance of Equity Interests in a Restricted Subsidiary) not otherwise permitted under this Section 6.05 in an aggregate principal amount not to exceed \$5,000,000 during the term of this Agreement; *provided* that (i) such Disposition is made for Fair Market Value and (ii) the Borrower or a Restricted Subsidiary shall receive not less than 90% of such consideration in the form of cash or Permitted Investments;

(l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) [reserved];

(n) transfers of condemned property as a result of the exercise of “*eminent domain*” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(o) [reserved]; and

(p) [reserved].



Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, Holdings, the Borrower, and each Subsidiary and any Intermediate Parent will comply with the Material Intellectual Property Provision.

Notwithstanding the foregoing or anything else in this Agreement or the other Loan Documents to the contrary, for purposes of this Section 6.05, the Foreign Guarantors will be deemed to be Subsidiaries of the Borrower that are not Loan Parties.

**SECTION 6.06      Holdings Covenant.** Holdings and any Intermediate Parent will not conduct, transact or otherwise engage in any business or operations, or own any Equity Interests of any Person, other than (i) the ownership and/or acquisition of the Equity Interests of the Borrower and any Intermediate Parent, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (iii) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and/or the Borrower, (iv) the performance of its obligations under and in connection with the Loan Documents, any documentation governing any Indebtedness or Guarantee permitted to be incurred or made by it under Article VI, the Transactions and the other agreements contemplated hereby and thereby, (v) any public offering of its common stock or any other issuance or registration of its (or its direct or indirect parent's) Equity Interests for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, including the formation of one or more "shell" companies to facilitate any such offering or issuance, (vi) any transaction that Holdings or any Intermediate Parent is permitted to enter into or consummate under Article VI (including, but not limited to, the making of any Restricted Payment permitted by Section 6.08 or holding of any cash or Permitted Investments received in connection with Restricted Payments made in accordance with Section 6.08 pending application thereof in the manner contemplated by Section 6.04, the incurrence or payment of any Indebtedness permitted to be incurred by it under Section 6.01 or not prohibited to be paid by it under Section 6.08(b) and, subject to the limitations set forth in the preceding clause (i), the making of any Investment in any Intermediate Parent, the Borrower or any of its Subsidiaries permitted to be made by it under Section 6.04), (vii) incurring reasonable and customary documented fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (viii) providing indemnification as permitted in Section 6.09, (ix) activities incidental to the consummation of the Transactions and (x) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

**SECTION 6.07      Negative Pledge.** Holdings and the Borrower will not, and will not permit any Restricted Subsidiary or Intermediate Parent to enter into any agreement, instrument, deed or lease that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, for the benefit of the Secured Parties with respect to the Secured Obligations or under the Loan Documents; *provided* that the foregoing shall not apply to:

(a) restrictions and conditions imposed by (i) Requirements of Law, (ii) any Loan Document, (iii) any documentation governing any Permitted Receivables Financing entered into in the ordinary course, (iv) any documentation governing the Prepetition Existing Credit Agreement, (v) [reserved], (vi) [reserved], (vii) [reserved], (viii) [reserved] and (ix) [reserved]; *provided* that with respect to Indebtedness referenced above, such restrictions shall be no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and such restrictions shall not expand the scope in any material respect of any such restriction or condition contained in the Indebtedness being refinanced;



(b) customary restrictions and conditions existing on the Effective Date set forth on Schedule 6.07 and any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;

(c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale; *provided* that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold and such sale is permitted hereunder;

(d) customary provisions in leases, licenses and other contracts restricting the assignment thereof;

(e) restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent such restriction applies only to the property securing by such Indebtedness;

(f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); *provided* that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any Restricted Subsidiary;

(g) restrictions or conditions in any Indebtedness permitted pursuant to Section 6.01 that is incurred or assumed by Restricted Subsidiaries that are not Loan Parties to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents or, in the case of Junior Financing, are market terms at the time of issuance and are imposed solely on such Restricted Subsidiary and its Subsidiaries;

(h) restrictions on cash (or Permitted Investments) or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on cash or deposits constituting Permitted Encumbrances);

(i) [reserved];

(j) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted by Section 6.02 and applicable solely to such joint venture and entered into in the ordinary course of business; and

(k) customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Borrower and its Subsidiaries to meet their ongoing obligations.

#### SECTION 6.08 Restricted Payments; Certain Payments of Indebtedness.

(a) Neither Holdings nor the Borrower will, nor will they permit any Intermediate Parent or Restricted Subsidiary to pay or make, directly or indirectly, any Restricted Payment, except:

(i) (A) each Restricted Subsidiary may make Restricted Payments to the Borrower or any other wholly-owned Subsidiary of the Borrower that is a Loan Party and (B) each Restricted Subsidiary that is not a Loan Party may make Restricted Payments to any other wholly-owned Restricted Subsidiary that is not a Loan Party in the ordinary course of business and consistent with past practice;



(ii) [reserved];

(iii) Holdings may declare and make dividend payments or other distributions payable solely in the Equity Interests of Holdings;

(iv) [reserved];

(v) repurchases of Equity Interests in Holdings (or Restricted Payments by Holdings to allow repurchases of Equity Interest in any direct or indirect parent of Holdings) deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such stock options or warrants;

(vi) Restricted Payments made by Holdings to redeem, acquire, retire or repurchase its Equity Interests (or any options, warrants, restricted stock units or stock appreciation rights issued with respect to any of such Equity Interests) (or make Restricted Payments to allow any of Holdings' direct or indirect parent companies to so redeem, retire, acquire or repurchase their Equity Interests) held by future, current or former officers, managers, consultants, directors and employees (or their respective affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees) of Holdings (or any direct or indirect parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries, upon the death, disability, retirement or termination of employment of any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement; *provided* that the aggregate amount of Restricted Payments permitted by this clause (vi) after the Effective Date, together with the aggregate amount of loans and advances by Holdings, the Borrower or any Restricted Subsidiary to any parent of Holdings made pursuant to Section 6.04(m) in lieu thereof, shall not exceed \$1,000,000 in the aggregate during the term of this Agreement;

(vii) Holdings may make Restricted Payments in cash:

(A) to allow any direct or indirect parent of Holdings to pay, for any taxable period for which Holdings and/or any of its Subsidiaries are members of a consolidated, combined or unitary tax group for U.S. federal and/or applicable state, local or foreign income Tax (or any similar Tax imposed in lieu of an income tax) for the purposes of which a direct or indirect parent of Holdings is the common parent or applicable taxpayer (a "Tax Group"), the portion of any U.S. federal, state, local or foreign Taxes (as applicable) of such Tax Group for such taxable period that is attributable to Holdings and/or its Subsidiaries or such parent's or applicable taxpayer's ownership of Holdings and/or its Subsidiaries (net of any payments already made by Holdings and its Subsidiaries); *provided* that Restricted Payments made pursuant to this clause (a)(vii)(A) shall not exceed the Tax liability that Holdings and/or its Subsidiaries (as applicable) would have incurred were such Taxes determined as if such entity(ies) were a standalone taxpayer or a stand-alone group;

(B) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay (1) its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including travel, administrative, legal, accounting, audit and similar expenses payable to third parties) that are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership of Holdings and its Subsidiaries, (2) any reasonable and customary indemnification claims made by directors or officers of any direct or



indirect parent of Holdings attributable to the ownership or operations of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, (3) fees and expenses (x) due and payable by any of the Borrower and the Restricted Subsidiaries and (y) otherwise permitted to be paid by the Borrower and the Restricted Subsidiaries under this Agreement, (4) payments that would otherwise be permitted to be paid directly by the Borrower or the Restricted Subsidiaries pursuant to Section 6.09(iii) or (5) subject to there being no continuing Event of Default, (I) payments that would otherwise be permitted to be paid directly by Holdings, the Intermediate Parents, the Borrower or the Restricted Subsidiaries pursuant to Section 6.09(x) or (II) to the extent permitted by Section 6.09, other customary advisory, refinancing, subsequent transaction and exit fees and franchise, registration or similar Taxes payable by any direct or indirect parent of Holdings that are attributable to the ownership of Holdings and its Subsidiaries, in each case, in accordance with the Approved Budget;

(C) the proceeds of which shall be used by any direct or indirect parent of Holdings to pay franchise and similar Taxes, and other fees and expenses, required to maintain its corporate existence;

(D) [reserved];

(E) the proceeds of which shall be used by any direct or indirect parent of Holdings to make payments of the type permitted by Section 6.08(a)(vi);

(F) [reserved];

(G) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of any direct or indirect parent company of Holdings to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries, in each case, in accordance with the Approved Budget; and

(H) [reserved];

(viii) [reserved];

(ix) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests; *provided* that such new Equity Interests contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(x) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant and any repurchases of Equity Interests in consideration of such payments including deemed repurchases in connection with the exercise of stock options and the vesting of restricted stock and restricted stock units;

(xi) Holdings may (a) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof and (b) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Indebtedness in accordance with its terms;



(xii) [reserved;]

(xiii) payments made or expected to be made by Holdings (or any parent thereof) in respect of withholding or similar taxes payable upon exercise of Equity Interests of Holdings (or such parent) by any future, present or former employee, director, officer, manager or consultant of Holdings, any Intermediate Parent, the Borrower or any of its Restricted Subsidiaries (or their respective controlled Affiliates or Immediate Family Members) and any repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests of Holdings (or such parent) represent a portion of the exercise price of such options or warrants or required withholding or similar taxes;

(xiv) [reserved]; and

(xv) [reserved];

(b) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary to make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other assets or property) of or in respect of principal of or interest on any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Junior Financing (the foregoing, “Restricted Debt Payments”), except:

(i) payment of regularly scheduled interest and principal payments (including any required AHYDO catch-up payment) as, in the form of payment and when due in respect of any Indebtedness, other than payments in respect of any Junior Financing prohibited by the subordination provisions thereof;

(ii) refinancings of Indebtedness with proceeds of a Junior Financing, or, other than in the case of Indebtedness subordinated in right of payment to the Loan Documents, unsecured Indebtedness, in each case, permitted to be incurred under Section 6.01;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of Holdings or any of its direct or indirect parent companies or any Intermediate Parent;

(iv) [reserved]; and

(v) [reserved].

(c) Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, amend or modify any documentation governing any Junior Financing, in each case

(i) if the effect of such amendment or modification (when taken as a whole):

(A) is materially adverse to the Lenders in their capacity as such;

(B) more disadvantageous to the Lenders than the relevant transaction in existence on the Effective Date;

(C) increases the amount of cash pay interest with respect thereto (including (x) pursuant to increases in the interest rate, increases to applicable floors, or increases to credit



spread adjustments, (y) through payment of cash fees or (z) through modification of any tests required to be satisfied in order to require the payment of cash interest); *provided* that, for the avoidance of doubt, this clause (iii) shall not apply with regard to any payment-in-kind interest;

(D) causes such indebtedness to mature earlier than (or have a Weighted Average Life to Maturity earlier than) the Loans;

(E) adds, increases the amount, or increases the frequency of any amortization schedule or mandatory prepayments;

(F) adds any covenant, condition, default, event of default, or any other term that is materially adverse to the Borrower relative to such terms as of the Effective Date (including any restrictions on paying the Loans or otherwise performing its obligations under this Agreement); or

(G) adds any guarantor or collateral that is not a Guarantor or Collateral, as applicable, under the Loan Documents.

(ii) in violation of the Forbearance Agreement or any intercreditor agreement related to such debt entered into with the Administrative Agent and/or changes the subordination terms set forth in the definitive documentation governing any Junior Financing.

SECTION 6.09 Transactions with Affiliates. Neither Holdings nor the Borrower will, nor will they permit any Restricted Subsidiary or Intermediate Parent to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(i) transactions with Holdings, the Borrower, any Intermediate Parent or any Restricted Subsidiary in the ordinary course of business;

(ii) on terms substantially as favorable to Holdings, the Borrower, such Intermediate Parent or such Restricted Subsidiary as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate;

(iii) [reserved];

(iv) issuances of Equity Interests of Holdings, any Intermediate Parent or the Borrower to the extent otherwise permitted by this Agreement;

(v) employment and severance arrangements between Holdings, the Borrower, any Intermediate Parent and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business or otherwise in connection with the Transactions (including loans and advances pursuant to Sections 6.04(b) and 6.04(p));

(vi) reasonable payments by Holdings (and any direct or indirect parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings (and any such parent thereof), any Intermediate Parent, the Borrower and the Restricted Subsidiaries on customary terms to the extent attributable to the ownership or operation of any Intermediate Parent, the Borrower and the Restricted Subsidiaries, to the extent payments are permitted by Section 6.08;



(vii) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of Holdings (or any direct or indirect parent company thereof), the Borrower, any Intermediate Parent and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings, any Intermediate Parent, the Borrower and the Restricted Subsidiaries;

(viii) transactions pursuant to permitted agreements in existence the Effective Date and set forth on Schedule 6.09;

(ix) Restricted Payments and Restricted Debt Payments permitted under Section 6.08 (other than Section 6.08(a)(vii)(B)(4) or (5));

(x) [reserved]; and

(xi) the issuance or transfer of Equity Interests (other than Disqualified Equity Interests) of Holdings to any Permitted Holder or to any former, current or future director, manager, officer, employee or consultant (or any Affiliate of any of the foregoing) of the Borrower, any of the Subsidiaries or any direct or indirect parent thereof.

Notwithstanding anything herein to the contrary, in no event shall any material transfer or transfers be made by a Debtor to an Affiliate that is a Non-Debtor without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), in each case other than any such transaction that is made in compliance with the Approved Budget (subject to Permitted Variances).

SECTION 6.10 Limitation on Modifications of Certificate of Incorporation, By-Laws and Certain Other Agreements; etc. Amend or modify in any manner, the articles or certificate of incorporation or by-laws of the Borrower that is, or would reasonably be expect to be adverse to the Lenders.

SECTION 6.11 Minimum Liquidity. Permit Actual Liquidity as of the last Friday of any calendar week (or, if such day is not a Business Day, the immediately preceding Business Day) to be less than \$30,000,000 (the "Minimum Liquidity Covenant").

SECTION 6.12 Contracts. The Debtors shall inform the Required Lenders prior to:

(a) Pay any claims in excess of \$100,000 individually or that exceeds \$3,000,000 in the aggregate for all vendors that arose prior to the Petition Date without the consent of the Required Lenders (which approval may be communicated by a Direction of the Required Lenders) (excluding any such payments made pursuant to the "first day" order and/or "second day" order).

(b) Enter into, reject, assume, or renegotiate any new material contract or amendments to any material contract (including, without limitation, any unexpired leases) with any customer or other vendor without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders).

(c) File with the Bankruptcy Court any motion to assume or reject or amend an executory contract under section 365 of the U.S. Bankruptcy Code without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders).

SECTION 6.13 Insolvency Proceeding Claims. Incur, create, assume, suffer to exist or permit, or permit any Subsidiary to incur, create, assume, suffer to exist or permit, any other super priority



administrative claim which is pari passu with or senior to the claim of the Administrative Agent or the Lenders against the Debtors, except as set forth in the DIP Order and the Canadian DIP Recognition Order.

SECTION 6.14 Bankruptcy Actions. Seek, consent to, or permit to exist, or permit any Subsidiary to seek, consent to or permit to exist, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), any order granting authority to take any action that is prohibited by the terms of this Agreement, the DIP Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of the DIP Order or any of the other Loan Documents.

SECTION 6.15 Canadian Defined Benefit Plan. No Loan Party shall establish, administer, sponsor, maintain or contribute to any Canadian Defined Benefit Plan, without the prior written consent of the Administrative Agent, and no Loan Party shall accept any liability in respect of any Canadian Defined Benefit Plan, contingent or otherwise, without the prior written consent of the Administrative Agent.

## ARTICLE VII EVENTS OF DEFAULT

SECTION 7.01 Events of Default. If any of the following events (any such event, an “Event of Default”) shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan when and as the same shall become due and payable hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Section) payable under any Loan Document, when and as the same shall become due and payable hereunder, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall be untrue or incorrect in any material respect when made or deemed made;

(d) Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02(a), 5.04 (with respect to the existence of Holdings, any Intermediate Parent or the Borrower), 5.10, 5.14, 5.19, 5.20, 5.21, 5.23, 5.24, 5.25, 5.26 5.27 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Section), and such failure (if curable) shall continue unremedied for a period of 5 Business Days;

(f) Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries shall fail to make any payment (whether of principal, interest or otherwise and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable grace period) other than with the prior written consent of the Required Lenders, which may be communicated by means of a Direction of the Required Lenders;



(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (other than with the prior written consent of the Required Lenders, which may be communicated by means of a Direction of the Required Lenders), *provided* that this paragraph (g) shall not apply to (i) Prepetition Indebtedness to the extent the holders thereof are stayed from exercising remedies in connection therewith as a result of the Chapter 11 Cases or the Canadian Recognition Proceeding (it being understood that paragraph (f) of this Section will apply to any failure to make any payment required as a result of any such termination or similar event);

(h) the failure by the Debtors to object to any administrative claim filed in the Chapter 11 Cases or the Canadian Recognition Proceeding over \$1,000,000, or the settlement by the Debtors of any claim in any amount over \$500,000, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders);

(i) [reserved];

(j) one or more enforceable post-petition judgments for the payment of money in an aggregate amount in excess of \$2,500,000 (to the extent not covered by insurance as to which the insurer has been notified of such judgment or order and has not denied its obligation) shall be rendered against Holdings, any Intermediate Parent, the Borrower, any of the Restricted Subsidiaries or any combination thereof, without the prior written consent of the Required Lenders (which may be communicated by means of a Direction of the Required Lenders), and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any post-petition judgment creditor shall legally attach or levy upon assets of such Loan Party that are material to the businesses and operations of Holdings, the Intermediate Parents, the Borrower and the Restricted Subsidiaries, taken as a whole, to enforce any such judgment;

(k) (i) an ERISA Event or Foreign Plan Event occurs that has resulted or could reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 401 of ERISA under a Multiemployer Plan, except, in each case, as could not, reasonably be expected to result in a Material Adverse Effect;

(l) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, except (i) as a result of the sale or other disposition of the applicable Collateral to a Person that is not a Loan Party in a transaction permitted under the Loan Documents, (ii) [reserved], (iii) as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage or (iv) as a result of acts or omissions of the Administrative Agent or any Lender;

(m) any provision of any Loan Document or any Guarantee of the Obligations shall for any reason be asserted by any Loan Party not to be a legal, valid and binding obligation of any Loan Party thereto other than as expressly permitted hereunder or thereunder;

(n) any Guarantees of the Obligations by Holdings, any Intermediate Parent, the Borrower or Subsidiary Loan Party pursuant to the Guarantee Agreement shall cease to be in full force and effect (in each case, other than in accordance with the terms of the Loan Documents);



- (o) a Change of Control shall occur;
- (p) any RSA Termination Event or termination of the RSA (other than due solely to a breach of the RSA by Lenders constituting Required Lenders);
- (q) the Forbearance Agreement is amended without the consent of the Collateral Agent (acting at the Direction of the Required Lenders) or is rescinded, repudiated or terminated or any payment is made or omitted to be made in contravention of its terms;
- (r) the entry of an order by the Bankruptcy Court or the Canadian Bankruptcy Court appointing, the filing of an application by any Debtor or any Debtor consenting to or supporting an application by any other Person, for an order seeking the appointment of, in either case without the prior written consent of the Required Lenders, an interim or permanent trustee in any Chapter 11 Case or Canadian Recognition Proceeding or the appointment of a receiver or an examiner under Section 1104 of the U.S. Bankruptcy Code in any Chapter 11 Case with expanded powers (beyond those set forth in Sections 1106(a)(3) and 1106(a)(4) of the U.S. Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Debtors;
- (s) other than circumstances whereby the Discharge of DIP Obligations shall concurrently occur, the consummation of a sale of all or substantially all of the Debtors' assets pursuant to a sale under Section 363 of the U.S. Bankruptcy Code or under Canadian Bankruptcy and Insolvency Law, a confirmed plan of reorganization in the Chapter 11 Cases or the Canadian Recognition Proceeding or otherwise or any Loan Party shall file a motion or other pleading or shall consent to or support a motion or other pleading filed by any other Person seeking any of the foregoing, in each case, without the prior written consent of the Required Lenders;
- (t) the creation or incurrence by the Debtors of any claim that is senior to or pari passu with the Adequate Protection Superpriority Claims without the prior written consent of the Required Lenders, except, for the avoidance of doubt, in connection with any Permitted Receivables Financing as set forth in the Receivables Order;
- (u) the Debtors filing or supporting any motion, pleading, applications or adversary proceeding challenging the validity, enforceability, perfection, or priority of the Prepetition Existing Liens or the Prepetition Existing Obligations or asserting or supporting any other cause of action against and/or with respect to any of the Prepetition Existing Liens, the Prepetition Existing Obligations or any of the Prepetition Existing Secured Parties;
- (v) the conversion of any Chapter 11 Case of a Debtor from one under chapter 11 to one under chapter 7 of the U.S. Bankruptcy Code or any Debtor shall file a motion or other pleading or shall consent to or support a motion or other pleading filed by any other Person seeking the conversion of any Chapter 11 Case of a Debtor under Section 1112 of the U.S. Bankruptcy Code or otherwise;
- (w) the payment of or granting adequate protection (except for Adequate Protection Payments) that rank senior to or pari passu with the Adequate Protection Payments with respect to any Prepetition Indebtedness (other than as set forth in the DIP Order or any Approved Budget);
- (x) [reserved];
- (y) (i) the entry by the Bankruptcy Court of any order terminating the Debtors' exclusive periods to file a plan of reorganization or liquidation and solicit acceptances thereon under Section 1121 of



the U.S. Bankruptcy Code or (ii) the expiration of any Loan Party's exclusive right to file a plan of reorganization or plan of liquidation;

(z) the dismissal of any Chapter 11 Case or Canadian Recognition Proceeding which does not contain a provision for Discharge of DIP Obligations, or if any Debtor shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case or Canadian Recognition Proceeding which does not contain a provision for the Discharge of DIP Obligations;

(aa) the entry by the Bankruptcy Court of an order granting relief from or modifying the automatic stay of Section 362 of the U.S. Bankruptcy Code or the entry by the Canadian Bankruptcy Court granting relief or modifying the CCAA stay, in each case (x) to allow any creditor to execute upon or enforce a Lien on any Collateral which has a value in excess of \$250,000, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority which has a value in excess of \$250,000;

(bb) the bringing of a motion or taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding, or the entry by the Bankruptcy Court of any order in any Chapter 11 Case or the entry by the Canadian Bankruptcy Court of any order in any Canadian Recognition Proceeding: (i) to obtain additional financing under Section 364(c) or (d) of the U.S. Bankruptcy Code or superpriority pursuant to the CCAA, as applicable, not otherwise permitted pursuant to this Agreement, the DIP Order or the Canadian DIP Recognition Order, as the case may be, except (x) as may be permitted by the Required Lenders and (y) to the extent that such new financing shall result in a Discharge of DIP Obligations substantially concurrently with the incurrence thereof or (ii) except as provided in the DIP Order or the Canadian DIP Recognition Order, to use cash collateral of the Agents or Lenders under Section 363(c) of the U.S. Bankruptcy Code or superpriority pursuant to the CCAA without the prior written consent of the Required Lenders;

(cc) the filing of a motion or the taking of any action in any Chapter 11 Case by any Debtor seeking the entry by the Bankruptcy Court of any order in any Chapter 11 Case, or the entry by the Bankruptcy Court of an order in any Chapter 11 Case, granting any Lien that is *pari passu* or senior to the Liens on the Collateral securing the Obligations, other than Liens expressly permitted under this Agreement or the DIP Order;

(dd) the filing of a motion or the taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding by any Debtor seeking an order, or the entry by the Bankruptcy Court of an order in any Chapter 11 Case or the Canadian Bankruptcy Court, amending, supplementing, staying, vacating or otherwise modifying any Loan Document, the DIP Order, the Canadian DIP Recognition Order or the Cash Management Order, in each case, in a manner that is adverse to the Lenders, in their capacities as such, without the prior written consent of the Required Lenders;

(ee) the filing of a motion or the taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding by any Debtor seeking the entry by the Bankruptcy Court of an order in any Chapter 11 Case or the entry by the Canadian Bankruptcy Court of an order in any Canadian Recognition Proceeding, or the entry by the Bankruptcy Court of an order in any Chapter 11 Case, avoiding or requiring repayment by any Lender of any portion of the payments made by any Debtor on account of the Obligations owing under this Agreement or the other Loan Documents (other than any motion seeking approval of the Receivables Order);

(ff) the filing of a motion by any Debtor requesting, or the entry of any order by the Bankruptcy Court granting, any superpriority claim which is senior or *pari passu* with the Lenders' claims or with the claims of the Prepetition Existing Lenders under the Prepetition Existing Loan Documents;



(gg) the filing of a motion or the taking of any action in any Chapter 11 Case or Canadian Recognition Proceeding by any Debtor seeking the entry of an order by the Bankruptcy Court or the Canadian Bankruptcy Court, as applicable, or the entry by the Bankruptcy Court or Canadian Bankruptcy Court, as applicable, of an order in any Chapter 11 Case or Canadian Recognition Proceeding, as applicable, precluding the Administrative Agent or the Prepetition Existing Administrative Agent to have the right to or be permitted to “credit bid”;

(hh) any attempt by any Loan Party to reduce, set off or subordinate the Obligations or the Liens securing such Obligations to any other Indebtedness;

(ii) the filing by any Loan Party of any chapter 11 plan of reorganization or disclosure statement attendant thereto, or any amendment to such plan or disclosure, that is not an Acceptable Plan without the prior written consent of the Required Lenders;

(jj) the filing by any of the Debtors of any motion, objection, application or adversary proceeding challenging the validity, enforceability, perfection or priority of, or seeking avoidance, subordination or characterization of, any portion of the Prepetition Existing Obligations or the Obligations, and/or the liens securing the Prepetition Existing Obligations or the Obligations or asserting any other claim or cause of action against and/or with respect to the Prepetition Existing Obligations, the Obligations, the liens securing the Prepetition Existing Obligations, the lien securing the Obligations, the Prepetition Existing Administrative Agent or the Administrative Agent (or if any Debtor files a pleading supporting any such motion, application or adversary proceeding commenced by any third party) or (ii) the entry of an order by the Bankruptcy Court providing relief adverse to the interests of any Lender, Prepetition Existing Lender, the Prepetition Existing Administrative Agent or the Administrative Agent with respect to any of the foregoing claims, causes of action or proceedings, but excluding preliminary or final relief granting standing to any other party to prosecute such claims, causes of action or proceeding; or

(kk) an order in the Chapter 11 Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the U.S. Bankruptcy Code against the Administrative Agent and the Secured Parties or (ii) limiting the extension under Section 552(b) of the U.S. Bankruptcy Code of the Liens of the Prepetition Existing Administrative Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date (or granting any other relief under section 552(b) of the U.S. Bankruptcy Code) or the commencement of other actions that is adverse to the Administrative Agent, the Secured Parties or their respective rights and remedies under the Loan Documents in any of the Chapter 11 Cases or inconsistent with any of the Loan Documents;

then, and in every such event (other than an event with respect to Holdings or the Borrower described in paragraph (h) or (i) of this Article), but subject to the terms and conditions of the DIP Order, and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any of the following actions, at the same or different times and upon written notice thereof by the Administrative Agent (which such notice shall be made to the Debtors, the Committee, counsel to PNC Bank (as defined in the Receivables Order), and the U.S. Trustee for the District of New Jersey (the “U.S. Trustee”) and shall be referred to herein as a “Termination Declaration” and the date which is the earliest to occur of any such Termination Declaration (excluding the notice period) being herein referred to as the “Termination Declaration Date”): (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment,



demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and (iii) declare a restriction or termination of the Debtors' ability to use Cash Collateral.

In addition, five (5) Business Days following the Termination Declaration Date (such five (5) Business Day period, the "Remedies Notice Period"), absent the Debtors curing all such existing Events of Default during such Remedies Notice Period, the Agents, subject to other applicable conditions set forth in the DIP Order, may foreclose on all or any portion of the Collateral, collect accounts receivable and, subject to the Carve-Out and the CCAA Administration Charge, apply the proceeds thereof to the Obligations in accordance with Section 7.02, occupy the Loan Parties' premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable non-bankruptcy law and the DIP Order. During the Remedies Notice Period, the Debtors and any statutory committee shall be entitled to seek an emergency hearing before the Bankruptcy Court for the sole purpose of determining whether an Event of Default has occurred.

SECTION 7.02     Application of Proceeds. After the exercise of remedies provided for in Section 7.01, subject to the Carve-Out and the CCAA Administration Charge, any amounts received on account of the Obligations, shall be applied as set forth in Section 2.16(f).

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT; ESCROW AGENT; SECURITY TRUSTEE

#### SECTION 8.01     Administrative Agent.

(a) Each of the Lenders hereby irrevocably appoints Wilmington Savings Fund Society, FSB to serve as Administrative Agent, collateral agent and trustee under the Loan Documents, and authorizes the Administrative Agent to take such actions and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Further, the Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents, trustees and attorneys-in-fact appointed by the Administrative Agent pursuant to this Section 8.01 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the Direction of the Required Lenders), shall be entitled to the benefits of all provisions of this Article VIII (including paragraph 13 hereof) and Article IX (as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the other Secured Parties, and none of Holdings, the Borrower or any other Loan Party shall have any rights as a third party beneficiary of any such provisions.

(b) The Person serving as the Administrative Agent hereunder shall be permitted to generally engage in any kind of business with Holdings, the Borrower or any other Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

(c) The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary



action or to exercise any discretionary power, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in the Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Holdings, the Borrower, any other Subsidiary or any other Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Holdings, the Borrower, a Lender and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent.

(d) The Administrative Agent shall be entitled to rely, and shall not incur any liability for relying, upon any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person (including, if applicable, a Responsible Officer or Financial Officer of such Person). The Administrative Agent also may rely, and shall not incur any liability for relying, upon any statement made to it orally or by telephone and believed by it to be made by the proper Person (including, if applicable, a Financial Officer or a Responsible Officer of such Person). The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(e) The Administrative Agent may perform any of and all its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of and all their duties and exercise their rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

(f) Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign upon 30 days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Borrower's consent (unless an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an



Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent, which shall be (a) an Approved Bank with an office in New York, New York, or an Affiliate of any such Approved Bank and (b) approved by the Borrower (unless an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing) (the date upon which the retiring Administrative Agent is replaced, the “Resignation Effective Date”); *provided*, that if no such successor shall have been appointed (and shall have accepted such appointment) within 45 days after the retiring Administrative Agent gives notice of its resignation, such resignation shall nevertheless become effective, and the Resignation Effective Date shall occur on such date. If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent that has accepted such appointment, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent.

(g) If the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders and the Borrower may, to the extent permitted by applicable law, by notice in writing to such Person remove such Person as Administrative Agent and, with the consent of the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(h) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except (i) that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and (ii) with respect to any outstanding payment obligations) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents as set forth in this Section. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(i) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender, or any of the Related Parties of any of the foregoing, or any of the financial advisors of the Loan Parties, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Lender,



or any of the Related Parties of any of the foregoing, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(j) Each Lender, by delivering its signature page to this Agreement and funding its Loans on the Effective Date, or delivering its signature page to an Assignment and Assumption pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

(k) No Lender shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Lenders in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent on behalf of the Lenders at such sale or other disposition. Each Lender, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations, to have agreed to the foregoing provisions.

(l) Notwithstanding anything herein to the contrary, each Person named on the cover page of this Agreement shall have the benefit of the indemnities provided for hereunder, including under Section 9.03, fully as if named as an indemnitee or indemnified person therein and irrespective of whether the indemnified losses, claims, damages, liabilities and/or related expenses arise out of, in connection with or as a result of matters arising prior to, on or after the effective date of any Loan Document.

(m) To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. Without limiting or expanding the provisions of Section 2.15, each Lender shall, and does hereby, indemnify the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the U.S. Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this paragraph. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other obligations under any Loan Document.



(n) Each Secured Party hereby appoints the Administrative Agent to act as its agent under and in connection with the relevant Security Documents and acknowledges that the Administrative Agent is the beneficiary of the security interests granted thereunder and the Administrative Agent will accept such grants of security interests under the relevant Security Documents on its behalf and will enter into the relevant Security Documents as secured party, lienholder or pledgee in its own name.

#### SECTION 8.02 Escrow Agent.

(a) Each of the Lenders (and the other Secured Parties by their acceptance of the benefits under the Loan Documents) irrevocably designates and appoints the Escrow Agent as its agent under this Agreement and the other Loan Documents with and irrevocably authorizes the Escrow Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Escrow Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Escrow Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender (or other Secured Party), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Escrow Agent.

(b) For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, the Escrow Agreement, or any additional document, instrument, certificate and/or agreement related to any of the foregoing, each of the parties hereto and Escrow Agent acknowledge and agree that in no event shall any Deposit Property (as such term is defined in the Escrow Agreement) or other property, proceeds, cash, cash equivalents, or otherwise placed or held, in each case, in the Loan Proceeds Account at any time be, or be deemed to be, property of any of the Borrower or its affiliates or subsidiaries or any of their respective bankruptcy estates.

SECTION 8.03 Collateral Agent as Security Trustee of UK Collateral Documents. For the purposes of any Liens created under a UK Collateral Document, the following additional provisions shall apply, in addition to the provisions set out above or otherwise hereunder:

(a) In this Section, the following expressions have the following meanings:

“Charged Property” means the assets of any of the Loan Parties which from time to time are, or are expressed to be, the subject to a security interest under a UK Collateral Document.

(b) Each Lender appoints the Collateral Agent to hold the security interests constituted by the UK Collateral Document on trust for the Lenders on the terms of the Loan Documents and the Collateral Agent accepts that appointment.

(c) Each Lender confirms its approval of the UK Collateral Documents and authorizes and instructs the Collateral Agent: (i) to execute and deliver the UK Collateral Documents; (ii) to exercise the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions given to the Collateral Agent (in its capacity as security trustee) under or in connection with the UK Collateral Documents together with any other incidental rights, powers, authorities and discretions; and (iii) to give any authorizations and confirmations to be given by the Collateral Agent (in its capacity as security trustee) on behalf of the Lenders under the UK Collateral Documents.

(d) Each Lender confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by a UK Collateral Document and accordingly authorizes: (a) the Collateral



Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (b) the U.K. Land Registry (or other relevant registry) to register the Collateral Agent as a sole proprietor of such security interest.

(e) Section 1 of the Trustee Act 2000 (U.K.) shall not apply to the duty of the Collateral Agent in relation to the trusts constituted by this Agreement.

(f) In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1925 (U.K.) or the Trustee Act 2000 (U.K.), the provisions of this Agreement shall prevail to the extent allowed by law, and shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000 (U.K.).

#### SECTION 8.04 Québec Collateral.

(a) For greater certainty, and without limiting the powers of the Administrative Agent or any other Person acting as mandatary (agent) of the Administrative Agent, each of the Secured Parties hereby irrevocably appoints the Administrative Agent as the hypothecary representative for all present and future Secured Parties pursuant to Article 2692 of the Civil Code of Québec in order to hold all hypothecs granted by any Loan Party on property pursuant to the laws of the Province of Québec. The execution by the Administrative Agent, acting as hypothecary representative, prior to the Effective Date, of any deed of hypothec is hereby ratified and confirmed.

(b) The (b) appointment of the Administrative Agent as hypothecary representative for the benefit of the Secured Parties, shall be deemed to have been ratified and confirmed by each Person accepting an assignment of, a participation in or an arrangement in respect of, all or any portion of any Secured Parties' rights and obligations under this Agreement by the execution of an assignment, including an assignment or other agreement pursuant to which it becomes such assignee or participant, and by each successor Administrative Agent by the execution of an assignment or other agreement, or by the compliance with other formalities, as the case may be, pursuant to which it becomes a successor Administrative Agent under this Agreement. The Administrative Agent hereby confirms having accepted to act as hypothecary representative of all present and future Secured Parties for all purposes of Article 2692 of the Civil Code of Québec. Each successor Administrative Agent appointed in accordance with the terms of this Agreement shall automatically (and without any further act or formality) become the successor hypothecary representative under each deed of hypothec referred to above.

(c) The Administrative Agent acting as hypothecary representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of the Administrative Agent herein, which shall apply mutatis mutandis to the Administrative Agent acting as hypothecary representative.

### ARTICLE IX MISCELLANEOUS

SECTION 9.01 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, e-mail or other electronic transmission, as follows:

(a) If to Holdings or the Borrower, to:



Cyxtera DC Holdings, Inc.  
2333 Ponce de Leon Blvd, Suite 900  
Coral Gables, FL USA 33134  
Attn: Carlos Sagasta and Victor Semah  
Phone (305) 375-6000  
Email: carlos.sagasta@cyxtera.com and victor.semah@cyxtera.com

With copies to: Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Joshua N. Korff, P.C. and Ben Steadman  
Christopher Marcus, P.C., and Derek I. Hunter  
Email: joshua.korff@kirkland.com and ben.steadman@kirkland.com  
christopher.marcus@kirkland.com, and derek.hunter@kirkland.com

(b) If to the Administrative Agent, to:

WSFS Institutional Services  
500 Delaware Ave  
Wilmington, DE USA 19801  
Attn: John McNichol  
Phone (302) 573-3269  
Email: jmcnichol@wsfsbank.com

and

With copies to: ArentFox Schiff LLP  
1301 Avenue of the Americas  
New York, NY 10019  
Attention: Jeffrey Gleit  
Email: Jeffrey.Gleit@afslaw.com

(c) If to the Escrow Agent, to:

The Bank of New York Mellon  
500 Ross Street, 12th Floor  
Pittsburgh, PA 15262  
Attention: Alicia Strobe  
Tel: (412) 234-0295  
Email: alicia.c.strobe@bnymellon.com

and

With copies to: Bryan Cave Leighton Paisner LLP  
1290 Avenue of the Americas  
New York, NY 10104  
Attention: Jeremy Finkelstein  
Tel: (212) 541-3071  
Email: Jeremy.finkelstein@bclplaw.com



(d) if to any other Lender, to it at its address (or fax number or email address) set forth in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax or other electronic transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient).

Holdings and the Borrower may change their address, email or facsimile number for notices and other communications hereunder by notice to the Administrative Agent, the Administrative Agent may change its address, email or facsimile number for notices and other communications hereunder by notice to Holdings and the Borrower and the Lenders may change their address, email or facsimile number for notices and other communications hereunder by notice to the Administrative Agent. Notices and other communications to the Lenders hereunder may also be delivered or furnished by electronic transmission (including email and Internet or intranet websites) pursuant to procedures reasonably approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic transmission.

Notwithstanding anything herein or in any other Loan Document providing for the delivery of any Approved Electronic Communication by any other means, the Loan Parties shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent to jmcnichol@wsfsbank.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify to the Borrower (which notice shall be effective upon acknowledgement of receipt thereof by the Borrower). Nothing in this paragraph shall prejudice the right of the Administrative Agent or any Lender Party to deliver any Approved Electronic Communication to any Loan Party in any manner authorized in this Agreement or to request that the Borrower effect delivery in such manner.

Each of the Lenders and each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lender Parties by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”). Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single- user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lender Parties and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lender Parties and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

Nothing in this Agreement or in any other Loan Document shall be construed to limit or affect the obligation of the Loan Parties or any other Person to serve upon the Administrative Agent, the Collateral Agent and the Lenders in the manner prescribed by the U.S. Bankruptcy Code any pleading or notice



required to be given to the Administrative Agent, the Collateral Agent and the Lenders pursuant to the U.S. Bankruptcy Code.

SECTION 9.02      Waivers; Amendments.

(a) No failure or delay by any of the Agents or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or Holdings in any case shall entitle the Borrower or Holdings to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.12, neither any Loan Document nor any provision thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower, the Administrative Agent (to the extent that such waiver, amendment or modification does not affect the rights, duties, privileges or obligations of the Administrative Agent under this Agreement, the Administrative Agent shall execute such waiver, amendment or other modification to the extent approved by the Required Lenders) and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders, *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender), (ii) reduce the principal amount of any Loan (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness in principal) or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly and adversely affected thereby, *provided* that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay default interest pursuant to Section 2.11(c), (iii) postpone the maturity of any Loan (it being understood that a waiver of any condition precedent, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity date), or the date of any scheduled amortization payment of the principal amount of any Loan under Section 2.08 or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly and adversely affected thereby, (iv) change any of the provisions of this Section without the written consent of each Lender directly and adversely affected thereby, *provided* that any such change which is in favor of a Class of Lenders holding Loans maturing after the maturity of other Classes of Lenders (and only takes effect after the maturity of such other Classes of Loans or Commitments) will require the written consent of the Required Lenders with respect to each Class directly and adversely affected thereby, (v) change any of the provisions of this Section or the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each



Lender (or each Lender of such Class, as the case may be), (vi) release all or substantially all the value of the Guarantees under the Guarantee Agreement (except as expressly provided in the Loan Documents) without the written consent of each Lender (other than a Defaulting Lender or a Disqualified Lender), (vii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender (other than a Defaulting Lender or a Disqualified Lender) (except as expressly provided in the Loan Documents), (viii) change any of the provisions of Section 2.16(b), Section 2.16(c) or any other provision in the Loan Documents in a manner that would by its terms alter the pro rata sharing and/or application of payments or proceeds of Collateral required thereby or any other provision in the Loan Documents in a manner that would by its terms alter the pro rata sharing and/or application of payments or proceeds of Collateral required thereby without the written consent of each Lender directly and adversely affected thereby, (ix) permits the creation or the existence of any Subsidiary that would be “unrestricted” or otherwise excluded from the requirements, taken as a whole, applicable to Subsidiaries pursuant to this Agreement without the written consent of each Lender affected thereby, (x) amend or modify the definition of “Material Intellectual Property” or “Material Intellectual Property Provision” or the last paragraph of Section 6.05 or the last paragraph of Section 6.06 without the written consent of each Lender directly and adversely affected thereby, (xi) authorize additional Indebtedness that would be issued under the Loan Documents for the purpose of influencing voting thresholds without the written consent of each Lender directly and adversely affected thereby, (xii) amend or modify the Loan Documents to allow for purchases of Term Loans (by dutch auction, open market purchase or through other assignments) by Holdings, any Intermediate Parent, the Borrower or any of their Subsidiaries or Affiliates, in each case, using consideration other than cash without the written consent of each Lender directly and adversely affected thereby, (xiii) amend or modify Section 9.15 or provide that Subsidiaries that are not wholly-owned Subsidiaries are not required to become Subsidiary Loan Parties without the written consent of each Lender directly and adversely affected thereby or (xiv) subordinates the Obligations to any other Indebtedness or subordinates the Lien securing the Obligations to any other Lien securing any other Indebtedness without the written consent of Lenders having Term Loans and unused Commitments representing more than 66.67% of the aggregate Dollar Amount of Term Loans and unused Commitments (*provided* that, to the extent that any Lender is providing such other Indebtedness, the opportunity to participate in such financing shall be offered to all other Lenders on a pro rata basis), *provided further*, that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent, (B) [reserved], (C) [reserved], (D) the Administrative Agent may, from time to time on and after the Effective Date, without any further consent of any Lender, enter into amendments to, amendments and restatements of, and/or replacements of, any intercreditor agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral that is permitted under this Agreement, in each case, in order to effect the first-priority Liens on the Collateral and to provide for certain additional rights, obligations and limitations in respect of, any Liens required by the terms of this Agreement to be junior priority Liens or other Liens that are, in each case, incurred in accordance with Article VI of this Agreement, and to establish certain relative rights as between the holders of the Secured Obligations and the holders of the Indebtedness secured by such Liens, (E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by Holdings, the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency; provided that, such amendment shall be posted for review by the Lenders, and such amendment shall become effective only if Required Lenders have not objected to such amendment within ten (10) Business Days, (F) [reserved] and (G) [reserved]. Notwithstanding the foregoing, (a) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents, *provided* that such credit facilities shall rank *pari passu* or junior in terms of both priority of Liens on Collateral securing, and right of payment with, the Secured Obligations, and (ii) to include appropriately the Lenders holding such credit facilities in any determination



of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion, (b) this Agreement and other Loan Documents may be amended or supplemented by an agreement or agreements in writing entered into by the Administrative Agent and Holdings, the Borrower or any Loan Party as to which such agreement or agreements is to apply, without the need to obtain the consent of any Lender, to include “parallel debt” or similar provisions, and any authorizations or granting of powers by the Lenders and the other Secured Parties in favor of the Administrative Agent, in each case required to create in favor of the Administrative Agent any security interest contemplated to be created under this Agreement, or to perfect any such security interest, where the Administrative Agent shall have been advised by its counsel that such provisions are necessary or advisable under local law for such purpose (with Holdings and the Borrower hereby agreeing to, and to cause their subsidiaries to, enter into any such agreement or agreements upon reasonable request of the Administrative Agent promptly upon such request) and (c) upon notice thereof by the Borrower to the Administrative Agent with respect to the inclusion of any previously absent financial maintenance covenant, this Agreement shall be amended by an agreement in writing entered into by the Borrower and the Administrative Agent without the need to obtain the consent of any Lender to include such covenant on the date of the incurrence of the applicable Indebtedness to the extent required by the terms of such definition or section.

(c) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders, to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section being referred to as a “Non-Consenting Lender”), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment), *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld,

(d) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts (including any amounts under Section 2.09(a)(i)), payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) unless waived, the Borrower or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b).

(e) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, the Loans of any Lender that is at the time (i) [reserved], (ii) a Defaulting Lender or (iii) a Disqualified Lender, shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class) or the Required Lenders, have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.02); *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(f) [Reserved].



(g) Notwithstanding anything to the contrary contained in this Section 9.02, the Guarantee, the Security Documents and related documents executed by Holdings, any Intermediate Parent, the Borrower or its Subsidiaries in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent (acting at the Direction of the Required Lenders) at the reasonable request of the Borrower without the need to obtain the further consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) cure ambiguities or defects or (iii) to cause the Guarantee, the Security Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein).

#### SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) Subject to the DIP Order, the Borrower shall pay, whether accrued or incurred prior to, on, or after the Petition Date, (i)(A) all reasonable and documented or invoiced out-of-pocket expenses incurred by each of the Administrative Agent and the Escrow Agent and its respective Affiliates (without duplication), including the reasonable fees, charges and disbursements of counsel for each such Agent, respectively, and to the extent reasonably determined by such Agent to be necessary local counsel in each applicable jurisdiction or otherwise retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), in each case for each such Agent, respectively, and to the extent retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), consultants, in connection with their due diligence investigation, the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (B) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Required Lenders, including the reasonable fees, charges and disbursements of counsel for the Required Lenders and to the extent reasonably determined by the Required Lenders to be necessary local counsel in each applicable jurisdiction or otherwise retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), in each case for the Required Lenders, and to the extent retained with the Borrower's consent (not to be unreasonably withheld, conditioned or delayed), consultants, in connection with their due diligence investigation, the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof and (ii) (A) all reasonable and documented or invoiced out-of-pocket expenses incurred by each of the Administrative Agent and the Escrow Agent and its respective Affiliates, including the fees, charges and disbursements of counsel for each such Agent, respectively, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that such counsel shall be limited to one lead counsel and local counsel in each applicable jurisdiction and, in the case of an actual or perceived conflict of interest, additional counsel per affected party and (B) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Required Lenders, including the fees, charges and disbursements of counsel for the Required Lenders, in connection with the enforcement or protection of their rights in connection with the Loan Documents, including their rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided* that such counsel shall be limited to lead counsel and local counsel in each applicable jurisdiction and, in the case of an actual or perceived conflict of interest, additional counsel per affected party.

(b) Subject to the DIP Order, the Borrower shall indemnify each Agent, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, whether accrued or incurred prior to, on, or after the Petition Date, any and all losses, claims, damages, liabilities and reasonable and documented or invoiced out-of-pocket



fees and expenses of one counsel and one local counsel in each applicable jurisdiction (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional counsel for such affected Indemnitee) for all similarly situated Indemnitees, taken as whole (which may include a single special counsel acting in multiple jurisdictions), incurred by or asserted against any such Indemnitee by any third party or by Holdings, any Intermediate Parent, the Borrower or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or the use of the proceeds therefrom, (iii) to the extent in any way arising from or relating to any of the foregoing, any actual or alleged presence or Release of Hazardous Materials on, at or from any Mortgaged Property or any other property currently or formerly owned or operated by Holdings, any Intermediate Parent, the Borrower or any Restricted Subsidiary, or any other Environmental Liability, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings, any Intermediate Parent, the Borrower or any Subsidiary and regardless of whether any Indemnitee is a party thereto, *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of the Loan Documents by, such Indemnitee or its Related Parties or (ii) result from any dispute between and among indemnified persons that does not involve an act or omission by Holdings, any Intermediate Parent, the Borrower or any of the Restricted Subsidiaries or any of their representatives, except that each Agent and the Lenders shall be indemnified in their capacities as such to the extent that none of the exceptions set forth in clause (i) applies to such Person at such time. This Section 9.03 shall not apply to Taxes other than any Taxes with respect to losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, and without limiting the Borrower's obligation to do so, each Lender severally agrees to pay to the Administrative Agent such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such or in its capacity as Collateral Agent. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the aggregate outstanding Loans and unused Commitments at the time.

(d) To the fullest extent permitted by applicable law, none of Holdings, any Intermediate Parent, the Borrower or any of its Subsidiaries shall assert, and each hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties, or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated thereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than 10 Business Days after written demand therefor; *provided, however*, that any Indemnitee shall promptly refund an indemnification



payment received hereunder to the extent that there is a final judicial determination that such Indemnitee was not entitled to indemnification with respect to such payment pursuant to this Section 9.03.

#### SECTION 9.04      Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section), the financial advisors of the Loan Parties (to the extent expressly provided in Article 8) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Subject to the conditions set forth in paragraphs (b)(ii), (f) and (h) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it under one or more Facilities) with the prior written consent (such consent (except with respect to assignments to competitors of the Borrower) not to be unreasonably withheld or delayed) of (A) the Borrower, *provided* that no consent of the Borrower shall be required for an assignment by any Term Lender of Term Loans to any Lender or to an Affiliate of any Lender, (iii) any Term Lender of Term Loans to an Approved Fund or (iv) if an Event of Default has occurred and is continuing, any Lender to any other Eligible Assignee; and *provided further*, that the Borrower shall have the right to withhold its consent to any assignment if, in order for such assignment to comply with applicable law, the Borrower would be required to obtain the consent of, or make any filing or registration with, any Governmental Authority and (B) the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required (x) for an assignment of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund or to the Borrower or any Affiliate thereof. Notwithstanding anything in this Section 9.04 to the contrary, if the consent of the Borrower is otherwise required by this paragraph with respect to any assignment of Loans, and the Borrower has not given the Administrative Agent written notice of its objection to such assignment within 3 Business Days after written notice to the Borrower, the Borrower shall be deemed to have consented to such assignment or (y) in connection with the Primary Syndication.

(i) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless the Borrower and the Administrative Agent otherwise consent (such consent not to be unreasonably withheld or delayed), *provided* that no such consent of the Borrower shall be required if an Event of Default under Section 7.01(a), (b), (h) or (i) has occurred and is continuing, (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, *provided* that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) the parties to each assignment shall execute and deliver to the Administrative Agent



an Assignment and Assumption, together (unless waived by the Administrative Agent) with a processing and recordation fee of \$3,500 (*provided* that (x) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment), *provided* that assignments made pursuant to Section 2.17(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective; and (D) the assignee, if it shall not be a Lender, shall deliver to the Borrower and the Administrative Agent any tax forms required by Section 2.15(e) and shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.13, 2.15 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c)(i) of this Section.

(iii) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal and stated interest amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Holdings, the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 9.04(b)(iii) shall be construed so that all Loans are at all times maintained in registered form under Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and Section 5f.103-1(c) of the United States Treasury Regulations.

(iv) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.15(e) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained



therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(v) The words “execution,” “signed,” “signature” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other Persons (other than to the Borrower or any of its Affiliates or a Person that is not an Eligible Assignee; a “Participant”), *provided further*, that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Holdings, the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly and adversely affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of (and subject to the obligations and limitations of) Sections 2.13 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 2.16(c) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.13 or Section 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior consent (not to be unreasonably withheld or delayed).

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”), *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary in connection with a Tax audit or other proceeding to establish that such Commitment, Loan, or other obligation is in registered form under Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive (absent manifest error), and each Person whose name is recorded in the Participant Register pursuant to the terms hereof shall be treated as a Participant for all purposes of this Agreement, notwithstanding notice to the contrary.



(d) Any Lender may, without the consent of the Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank, and this Section shall not apply to any such pledge or assignment of a security interest, *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle (an “SPV”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement, *provided* that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, such party will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(f) Notwithstanding anything herein to the contrary, except with the consent of the Required Consenting Term Lenders (as defined in the RSA), none of the Lenders may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees prior to the closing of all assignments made in connection with the Primary Syndication (if any) and any prohibited assignment shall be absolutely void ab initio, and the Administrative Agent shall not record such assignment on the Register or treat any purported transferee of such Loan as the owner of such Loan.

(g) Following the Effective Date, if so elected at the sole option of the Required Lenders, each Lender shall, in connection with the Primary Syndication, be obligated to assign its Loans and Commitments in accordance with the Primary Syndication Procedures to each participating Eligible Holder (as defined in the Primary Syndication Procedures) in accordance with the Primary Syndication Procedures. The Required Consenting Term Lenders (as defined in the RSA) in consultation with the Administrative Agent shall be authorized to establish a syndication escrow account in connection with the Primary Syndication Procedures (i) to hold the proceeds of the Primary Syndication and (ii) to accept and disburse funds from such syndication escrow account in accordance with the Primary Syndication Procedures. Notwithstanding anything to the contrary, no consent of the Borrower shall be required for an assignment made in connection with the Primary Syndication.



(h) Notwithstanding anything herein or in any other Loan Document to the contrary, no Lender may assign any portion of its Loans or Commitments to any Disqualified Lender or to Holdings, the Borrower or any of their respective Subsidiaries and Affiliates.

(i) Notwithstanding anything herein or in any other Loan Document to the contrary, the Administrative Agent shall not (i) except to the extent of its own gross negligence or willful misconduct in taking or failing to take any action, be responsible for, have any liability with respect to, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders or have any liability with respect to or arising out of any assignment or participation of Loans or Commitments to any Disqualified Lender and (ii) except to the extent arising out of its or its Related Parties' gross negligence or willful misconduct, have any liability with respect to any disclosure of confidential information to any Disqualified Lender.

**SECTION 9.05 Survival.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and until the Discharge of DIP Obligations has occurred. The provisions of Sections 2.13, 2.15 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, or the Discharge of DIP Obligations.

**SECTION 9.06 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 9.07 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**SECTION 9.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, subject to the DIP Order, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of the Borrower or any other Loan Party



against any of and all the obligations of the Borrower or any other Loan Party then due and owing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender shall notify the Borrower and the Administrative Agent of such setoff and application, *provided* that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Notwithstanding the foregoing, no amount set off from any Guarantor shall be applied to any Excluded Swap Obligation from such Guarantor.

SECTION 9.09      Governing Law; Jurisdiction; Consent to Service of Process.

(a)      This Agreement shall be construed in accordance with and governed by the law of the State of New York, and, to the extent applicable, the U.S. Bankruptcy Code.

(b)      Each of parties hereto hereby irrevocably and unconditionally submits (except to the extent expressly set out in those Loan Documents which are expressed to be governed by English Law), for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court, and, if the Bankruptcy Court does not have, or abstains from jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against Holdings, the Borrower or their respective properties in the courts of any jurisdiction.

(c)      Each of parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d)      Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10      WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN



INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11     Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12     Confidentiality.

(a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, trustees and agents, including accountants, legal counsel and other agents and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and any failure of such Persons to comply with this Section 9.12 shall constitute a breach of this Section 9.12 by the Administrative Agent or the relevant Lender, as applicable), (b) (x) to the extent requested by any regulatory (including self-regulatory) authority, required by applicable law or by any subpoena or similar legal process or (y) necessary in connection with the exercise of remedies; *provided* that, (i) in each case, unless specifically prohibited by applicable law or court order, each Lender and the Administrative Agent shall notify the Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency or other routine examinations of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information and (ii) in the case of clause (y) only, each Lender and the Administrative Agent shall use reasonable best efforts to ensure that such Information is kept confidential in connection with the exercise of such remedies, and *provided further*, that in no event shall any Lender or the Administrative Agent be obligated or required to return any materials furnished by Holdings, the Borrower or any of their Subsidiaries, (c) to any other party to this Agreement, (d) subject to an agreement containing confidentiality undertakings substantially similar to those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to any Loan Party or their Subsidiaries and its obligations under the Loan Documents, (e) with the consent of the Borrower, in the case of Information provided by Holdings, the Borrower or any other Subsidiary, (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a non- confidential basis from a source other than Holdings or the Borrower, (g) the Bankruptcy Court in connection with the approval of the Transactions contemplated hereby; or (h) to any ratings agency or the CUSIP Service Bureau on a confidential basis. In addition, the Agents and the Lenders may disclose the existence of this Agreement and publicly available information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments and the Borrowings hereunder. For the purposes of this Section, "Information" means all information received from Holdings or the Borrower relating to Holdings, the Borrower, any Subsidiary or their business, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by Holdings or the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE



MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT, WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13 USA Patriot Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of Title III of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify each Loan Party in accordance with the Title III of the USA Patriot Act.

SECTION 9.14 [Reserved].

SECTION 9.15 Release of Liens and Guarantees. A Subsidiary Loan Party shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Security Documents in Collateral owned by such Subsidiary Loan Party shall be automatically released, upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Loan Party ceases to be a Restricted Subsidiary. Upon (i) any sale or other transfer by any Loan Party (other than to Holdings, any Intermediate Parent, the Borrower or any other Loan Party) of any Collateral in a transaction permitted under this Agreement or (ii) the effectiveness of any written consent to the release of the security interest created under the Security Documents in any Collateral or the release of any Loan Party from its Guarantee under the Guarantee Agreement pursuant to Section 9.02, the security interests in such Collateral created by the Security Documents or such guarantee shall be automatically released. Upon the Discharge of DIP Obligations, all obligations under the Loan Documents and all security interests created by the Security Documents shall be automatically released. In connection with any termination or release pursuant to this Section, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent. The Lenders and other Secured Parties irrevocably authorize the Administrative Agent to release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(iv) or (xii) to the extent required by the terms of the obligations secured by such Liens pursuant to documents reasonably acceptable to the Administrative Agent. Notwithstanding anything to the contrary, no Subsidiary Loan Party shall be automatically released from its Guarantee (and related Collateral security) solely by virtue of such Person becoming an Excluded Subsidiary, other than in each case, in connection with a transaction permitted under this Agreement that



was done for a bona fide business purpose and not in contemplation of adversely affecting the Secured Parties' interests in the Guarantees and Collateral.

SECTION 9.16 No Fiduciary Relationship. Each of Holdings and the Borrower, on behalf of itself and its subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, Holdings, the Borrower, the other Subsidiaries and their Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lenders or their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

SECTION 9.17 [Reserved].

SECTION 9.18 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 9.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.20 [Reserved].



#### SECTION 9.21 Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to any party hereto or any holder of any obligation owing hereunder (the “Applicable Creditor”) shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than the currency in which such sum is stated to be due hereunder (the “Agreement Currency”), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the applicable Loan Parties agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

#### SECTION 9.22 Erroneous Payments.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 9.22 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such



amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower.

(d) Each party's obligations under this Section 9.22 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Documents.

SECTION 9.23 Incorporation of DIP Order. Each of the Loan Parties, the Administrative Agent, the Collateral Agent and the Lenders agrees that any reference contained herein to the DIP Order shall include all terms, conditions and provisions of such DIP Order and that the DIP Order is incorporated herein for all purposes. To the extent there is any inconsistency between the terms of this Agreement (or any other Loan Document) and the terms of the DIP Order, the terms of the DIP Order shall govern.

SECTION 9.24 Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Loan Parties, the estate of each Loan Party, and any trustee, other estate representative or any successor in interest of each Loan Party in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the U.S. Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Agents and the Secured Parties and their respective permitted assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Loan Parties to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Collateral Agent file financing statements or otherwise perfect its Liens under applicable law. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of the Loan Parties, the Agents and Secured Parties with respect to the transactions contemplated hereby and no Person (other than the Indemnitees) shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

SECTION 9.25 Lender Consent to Credit Bid. Each Lender hereby irrevocably (x) authorizes and directs the Collateral Agent to, in a manner determined by the Required Lenders and subject to the Collateral Agent's rights and protections (including requesting direction and indemnity), credit bid all or any portion of the Obligations in connection with any "credit bid" and (y) in connection with any credit bid, consents to the assignment and delegation to a Qualified Purchaser of such rights and obligations under this Agreement and the other Loan Documents, in each case as the Required Lenders determine in order to consummate such credit bid (and each such Lender shall execute and deliver such documents as the Collateral Agent reasonably requests to evidence such assignment and delegation). As used herein, "Qualified Purchaser" shall mean a Person (i) designated by the Required Lenders as a "Qualified Purchaser" in connection with any such credit bid, (ii) whose stock is owned pro rata by the Lenders (based



upon the obligations owing to such Lenders and utilized to consummate such credit bid) and (iii) whose actions are controlled by the Required Lenders.

*[Remainder of page intentionally blank; signature pages follow.]*







This is **Exhibit "II"** referred to in the Affidavit of  
Eric Koza Sworn before me this 6th day of June, 2023



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A Notary Public in and for the State of New York



SUSAN D. GOLDEN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GO6225002  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES JULY 19, 2026



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SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION GUARANTEE AGREEMENT

dated as of

June 6, 2023,

by and among

CYXTERA DC PARENT HOLDINGS, INC.,

CYXTERA DC HOLDINGS, INC.,

THE OTHER GUARANTORS FROM TIME TO TIME PARTY HERETO

and

WILMINGTON SAVINGS FUND SOCIETY, FSB,  
as Administrative Agent

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## SCHEDULES

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## EXHIBITS

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**SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION GUARANTEE AGREEMENT** dated as of June 6, 2023 (this “Agreement”), by and among CYXTERA DC PARENT HOLDINGS, INC., a Delaware corporation (“Holdings”), CYXTERA DC HOLDINGS, INC, a Delaware corporation (the “Borrower”), the various other Guarantors from time to time party hereto and WILMINGTON SAVINGS FUND SOCIETY, FSB, as administrative agent under the Credit Agreement referred to below (in such capacity and together with its successors and permitted assigns in such capacity, the “Administrative Agent”).

Reference is made to the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of June 6, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Holdings, the Borrower, the Lenders from time to time party thereto, Wilmington Savings Fund Society, FSB, as Administrative Agent and as collateral agent (in such capacity, the “Collateral Agent”), and the various other parties thereto. The Lenders have agreed to extend credit to the Borrower subject to the terms and conditions set forth in the Credit Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Agreement. The Guarantors are affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit. Accordingly, the parties hereto agree as follows:

## ARTICLE I Definitions

### SECTION 1.01. Credit Agreement.

(a) Capitalized terms used in this Agreement (including in the introductory paragraph hereto) and not otherwise defined herein have the meanings specified in the Credit Agreement.

(b) The rules of construction specified in Sections 1.03 and 1.04 of the Credit Agreement also apply to this Agreement, *mutatis mutandis*.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Administrative Agent” has the meaning assigned to such term in the preamble to this Agreement.

“Agreement” has the meaning assigned to such term in the preamble to this Agreement.

“Borrower” has the meaning assigned to such term in the preamble to this Agreement.

“Claiming Party” has the meaning assigned to such term in Section 3.02.

“Collateral Agent” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“Contributing Party” has the meaning assigned to such term in Section 3.02.

“Credit Agreement” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“Guaranteed Obligations” means the Secured Obligations guaranteed pursuant to Section 2.01 of this Agreement (including those incorporated therein by reference to Section 1 of each Supplement).



“Guaranteed Parties” means (a) each Lender, (b) the Administrative Agent, (c) the Collateral Agent, (d) each Joint Bookrunner, (e) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (f) the permitted successors and assigns of each of the foregoing.

“Guarantors” means Holdings, the Borrower, the Subsidiary Guarantors and the Intermediate Parent Guarantors.

“Holdings” has the meaning assigned to such term in the preamble to this Agreement.

“Intermediate Parent Guarantors” means each Intermediate Parent that becomes a party to this Agreement as an Intermediate Parent Guarantor after the Effective Date pursuant to Section 5.13; *provided* that if an Intermediate Parent is released from its obligations as an Intermediate Parent Guarantor hereunder as provided in Section 5.12(b), such Intermediate Parent shall cease to be an Intermediate Parent Guarantor hereunder effective upon such release.

“New Guarantor” means any Loan Party that becomes a party to this Agreement pursuant to a Supplement.

“Payment in Full” means the payment in full in cash of all the Guaranteed Obligations (other than contingent obligations in respect of which no claim has been made) and the termination or expiration of all Commitments.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Guarantors” means the Subsidiaries identified as such on Schedule I and each other Subsidiary that becomes a party to this Agreement as a Subsidiary Guarantor after the Effective Date pursuant to Section 5.13; *provided* that if a Subsidiary is released from its obligations as a Subsidiary Guarantor hereunder as provided in Section 5.12(b), such Subsidiary shall cease to be a Subsidiary Guarantor hereunder effective upon such release.

“Supplement” means an instrument in the form of Exhibit A, or any other form approved by the Administrative Agent, and in each case reasonably satisfactory to the Administrative Agent.

## ARTICLE II The Guarantees

SECTION 2.01. Guarantee. Each Guarantor (including each New Guarantor pursuant to Section 1 of each Supplement) irrevocably and unconditionally guarantees to each of the Guaranteed Parties, jointly and severally with the other Guarantors and severally, as a primary obligor and not merely as a surety, by way of an independent payment obligation, the due and punctual payment and performance of the Secured Obligations (other than, (i) with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor and (ii) in the case of the Borrower, in respect of its own obligations). Each Guarantor further agrees that the Guaranteed Obligations may be extended, renewed or increased, in whole or in part, or amended or modified, without notice to or further assent from it, and that it will remain bound upon its Guarantee hereunder notwithstanding any such extension, renewal or increase, or amendment or modification, of any of the Guaranteed Obligations. Each Guarantor waives presentment to, demand of payment from and protest to any Loan Party of any of the Guaranteed Obligations, and also waives notice of acceptance of its Guarantee and notice of protest for nonpayment.

SECTION 2.02. Guarantee of Payment; Continuing Guarantee. Each Guarantor further agrees that its Guarantee hereunder constitutes an absolute, irrevocable and unconditional Guarantee of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Guaranteed Obligations or operated as a discharge thereof) and not merely of



collection, and waives (i) any right to require that any resort be had by the Administrative Agent or any other Guaranteed Party to any security held for the payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of the Administrative Agent or any other Guaranteed Party in favor of any Loan Party or any other Person and (ii) any right that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Administrative Agent or any other Guaranteed Party to marshal assets or to proceed against any obligor, other Person or security for the payment or performance of any Guaranteed Obligations before, or as a condition to, proceeding against such Guarantor. Each Guarantor agrees that its Guarantee hereunder is continuing in nature and applies to all of the Guaranteed Obligations, whether currently existing or hereafter incurred.

SECTION 2.03. No Limitations.

(a) Subject to the DIP Order, except for the termination or release of a Guarantor's obligations hereunder as expressly provided in Section 5.12 and the limitations set forth in Section 2.07 or in the Supplement pursuant to which such Guarantor became a party hereto, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations (or of any of the Loan Documents or other agreements under which such Guaranteed Obligations arise), any impossibility in the performance of any of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, except for the termination or release of its obligations hereunder as expressly provided in Section 5.12, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by:

(i) the failure of any Guaranteed Party or any other Person to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(ii) the failure of any other Guarantor to sign or become a party to this Agreement or any rescission, waiver, amendment, restatement or modification of, or any release or departure from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;

(iii) the release of, or any impairment of or failure to perfect any Lien on, any security held by any Guaranteed Party for any of the Guaranteed Obligations;

(iv) any default, failure or delay, willful or otherwise, in the performance of any of the Guaranteed Obligations;

(v) any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than Payment in Full);

(vi) any illegality, lack of validity or lack of enforceability of any of the Guaranteed Obligations or Loan Documents;

(vii) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Loan Party or its assets or any resulting release or discharge of any of the Guaranteed Obligations;

(viii) the existence of any claim, set-off or other rights that any Guarantor may have at any time against the Borrower, the Administrative Agent, any other Guaranteed Party or any other



Person, whether in connection with the Credit Agreement, the other Loan Documents or any unrelated transaction;

(ix) this Agreement having been determined (on whatsoever grounds) to be invalid, nonbinding or unenforceable against any other Guarantor *ab initio* or at any time after the Effective Date;

(x) the fact that any Person that, pursuant to the Loan Documents, was required to become a party hereto may not have executed or is not effectually bound by this Agreement, whether or not this fact is known to the Guaranteed Parties;

(xi) any action permitted or authorized hereunder;

(xii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations; or

(xiii) any other circumstance (including any statute of limitations), or any existence of or reliance on any representation by the Administrative Agent, any other Guaranteed Party or any other Person, that might otherwise constitute a defense to, or a legal or equitable discharge of, the Borrower, any Guarantor or any other guarantor or surety (other than Payment in Full).

To the fullest extent permitted by applicable law, each Guarantor expressly authorizes the Guaranteed Parties to take and hold security in accordance with the terms of the Loan Documents for the payment and performance of the Guaranteed Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Guaranteed Obligations, all without affecting the obligations of any Guarantor hereunder.

(b) To the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of any Loan Party or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Loan Party, other than Payment in Full. To the fullest extent permitted by applicable law, the Administrative Agent and the other Guaranteed Parties may, at their election and in accordance with the terms of the Loan Documents, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Loan Party or exercise any other right or remedy available to them against any Loan Party, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent Payment in Full has occurred. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any Loan Party, as the case may be, or any security.

SECTION 2.04. Reinstatement. Each Guarantor agrees that, unless released pursuant to Section 5.12(b), its Guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligations is rescinded or must otherwise be restored by any Guaranteed Party upon the bankruptcy or reorganization (or any analogous proceeding in any jurisdiction) of any Loan Party or otherwise.

SECTION 2.05. Agreement to Pay; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Guaranteed Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any



Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Administrative Agent for distribution to the applicable Guaranteed Parties in cash the amount of such unpaid Guaranteed Obligation. If acceleration of the time for payment of any Guaranteed Obligation by any Guarantor is stayed by reason of the insolvency or receivership of any Guarantor or otherwise, all Guaranteed Obligations otherwise subject to acceleration under the terms of any Loan Document shall nonetheless be payable by the Guarantors hereunder. Upon payment by any Guarantor of any sums to the Administrative Agent as provided above, all rights of such Guarantor against any Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article III.

SECTION 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of each Loan Party's and their respective subsidiaries' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Guaranteed Parties will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks. In the event any Guaranteed Party (including the Administrative Agent), in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Guaranteed Party (including the Administrative Agent) shall be under no obligation (i) to undertake any investigation, (ii) to disclose any information which such Guaranteed Party (including the Administrative Agent), pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 2.07. Maximum Liability. Notwithstanding anything to the contrary in this Agreement and subject to the guarantee limitations set forth in Section 2.09:

(a) the right of recovery against each Guarantor under Section 2 hereof shall not exceed \$1.00 less than the lowest amount which would render such Guarantor's obligations under Section 2 hereof void or voidable under applicable law, including, without limitation, the Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the guaranty set forth herein and the obligations of each Guarantor hereunder; *provided* that, to effectuate the foregoing:

(i) the Administrative Agent and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Guarantor in respect of the guarantee set forth in Section 2 hereof at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor with respect thereto hereof not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in Section 2 hereof and its related contribution rights but before taking into account any liabilities under any other guarantee by such Guarantor (and for these purposes all guarantees of such Guarantor other than the guarantee under Section 2 hereof will be deemed to be enforceable and payable after the guaranty under Section 2 hereof); and

(ii) to the fullest extent permitted by applicable law, this Section 2.07(a) shall be for the benefit solely of creditors and representatives of creditors of each Guarantor and not for the benefit of such Guarantor or the holders of any Equity Interest in such Guarantor;

(b) each Guarantor agrees that Guaranteed Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.07(a) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Guaranteed Party hereunder;



(c) as to any Guarantor, this Agreement shall not extend to any Excluded Swap Obligations of such Guarantor; and

(d) the obligations and liabilities of any Guarantor and Intermediate Parent Guarantors that becomes a party to this Agreement after the date hereof shall be limited as and to the extent set forth in the applicable Supplement.

SECTION 2.08. [Reserved].

SECTION 2.09. Guarantee Limitations. The obligations of each Guarantor under its Guarantee shall be limited by the limitations set forth for its applicable jurisdiction of organization in Schedule II, as such schedule may be updated from time to time as set forth in the relevant Supplement pursuant to Section 5.02.

ARTICLE III.

Indemnity, Subrogation and Subordination

SECTION 3.01. Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 3.03) in respect of any payment hereunder, the Borrower agrees that (a) in the event a payment in respect of any Guaranteed Obligations shall be made by any other Guarantor under this Agreement, the Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor (other than the Borrower) shall be sold pursuant to any Security Document to satisfy in whole or in part any Guaranteed Obligations owed to any Guaranteed Party, the Borrower shall indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

SECTION 3.02. Contribution and Subrogation. Each Guarantor (a “Contributing Party”) agrees (subject to Sections 2.07 and 3.03) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Guaranteed Obligations or assets of any other Guarantor shall be sold pursuant to any Security Document to satisfy any Guaranteed Obligation owed to any Guaranteed Party and such other Guarantor (the “Claiming Party”) shall not have been fully indemnified as provided in Section 3.01, the Contributing Party shall indemnify the Claiming Party in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be the net worth of the Contributing Party on the date of such payment or sale, as applicable, and the denominator shall be the aggregate net worth of all the Guarantors on the date of such payment or sale, as applicable. Any Contributing Party making any payment to a Claiming Party pursuant to this Section 3.02 shall be subrogated to the rights of such Claiming Party under Section 3.01 to the extent of such payment.

SECTION 3.03. Subordination.

(a) Notwithstanding any provision of this Agreement to the contrary, but subject to Section 2.07, all rights of the Guarantors under Sections 3.01 and 3.02 and all other rights of the Guarantors of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the payment in full in cash of all of the Guaranteed Obligations. No failure on the part of any Guarantor to make the payments required by Sections 3.01 and 3.02 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Guarantor with respect to its obligations hereunder, and each Guarantor shall remain liable for the full amount of the obligations of such Guarantor hereunder.



(b) Each Guarantor hereby agrees that upon the occurrence and during the continuance of an Event of Default and after notice from the Administrative Agent to Holdings, all Indebtedness and other monetary obligations owed by it to, or to it by, any other Guarantor, any other Intermediate Parent or any other Subsidiary shall be fully subordinated to the payment in full in cash of all the Guaranteed Obligations.

#### ARTICLE IV Representations and Warranties

Each Subsidiary Guarantor and each Intermediate Parent Guarantor represents and warrants to the Administrative Agent and the other Guaranteed Parties that (a) the execution, delivery and performance by such Guarantor of this Agreement have been duly authorized by all necessary corporate or other action and, if required, action by the holders of such Guarantor's Equity Interests, and that this Agreement has been duly executed and delivered by such Guarantor and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and (b) all representations and warranties set forth in the Credit Agreement as to such Guarantor are true and correct in all material respects; *provided* that any representation and warranty in the Credit Agreement (i) that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects or (ii) that is qualified by knowledge shall, for purposes of this Article IV, be deemed to be a reference to such Guarantor's knowledge.

#### ARTICLE V Miscellaneous

SECTION 5.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Guarantor shall be given to it in care of Holdings and the Borrower as provided in Section 9.01 of the Credit Agreement.

#### SECTION 5.02. Waivers; Amendment.

(a) No failure or delay by the Administrative Agent or any other Guaranteed Party in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the other Guaranteed Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 5.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any other Guaranteed Party may have had notice or knowledge of such Default at the time. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. With respect to any Foreign Subsidiary that becomes a Subsidiary Loan Party, the guarantee of such Foreign Subsidiary may be limited by certain principles to comply with local law or advice of local counsel with respect to the applicable jurisdiction of organization of such Foreign Subsidiary as reasonably determined by the Borrower and the Administrative Agent and set forth on Schedule II, as updated in the relevant Supplement relating to such Foreign Subsidiary.



(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Guarantor or Guarantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.02 of the Credit Agreement; *provided* that the Administrative Agent may, without the consent of any other Guaranteed Party, consent to a departure by any Guarantor from any covenant of such Guarantor set forth herein to the extent such departure is consistent with the authority of the Administrative Agent set forth in the definition of the term “Collateral and Guarantee Requirement” in the Credit Agreement.

SECTION 5.03. Administrative Agent’s Fees and Expenses; Indemnification.

(a) Each Guarantor, jointly with the other Guarantors and severally, agrees to reimburse the Administrative Agent for its fees and expenses incurred hereunder as provided in Section 9.03(a) of the Credit Agreement; *provided* that each reference therein to the “Borrower” shall be deemed to be a reference to “each Guarantor”.

(b) Without limitation of its indemnification obligations under the other Loan Documents, each Guarantor, jointly with the other Guarantors and severally, agrees to indemnify the Administrative Agent and the other Indemnitees against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable and documented or invoiced out-of-pocket fees and expenses of one counsel and local counsel in each applicable jurisdiction (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, one additional counsel for such affected Indemnitee) for all Indemnitees (which may include a single special counsel acting in multiple jurisdictions), incurred by or asserted against any Indemnitee by any third party or by Holdings, the Borrower, any Subsidiary or any Intermediate Parent arising out of, in connection with, or as a result of, the execution, delivery or performance of this Agreement or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Holdings, the Borrower, any Subsidiary or any Intermediate Parent and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties.

(c) To the fullest extent permitted by applicable law, no Guarantor shall assert, and each Guarantor hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet), *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such damages are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or a material breach of the Loan Documents by, such Indemnitee or its Related Parties, or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated thereby, the Transactions, any Loan or the use of the proceeds thereof.

(d) The provisions of this Section 5.03 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby or thereby, the repayment of any of the Guaranteed Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of any Guaranteed Party. Subject to the DIP Order, all amounts due under this Section shall be payable not later than 10 Business Days after written demand therefor; *provided, however*, any Indemnitee shall promptly refund an indemnification payment received hereunder to the



extent that there is a final judicial determination that such Indemnitee was not entitled to indemnification with respect to such payment pursuant to this Section 5.03. Any such amounts payable as provided hereunder shall be additional Guaranteed Obligations.

SECTION 5.04. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Guarantor or the Administrative Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 5.05. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in this Agreement or any other Loan Document and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Guaranteed Parties and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by or on behalf of any Guaranteed Party and notwithstanding that the Administrative Agent, any Lender or any other Guaranteed Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement or any other Loan Document, and shall continue in full force and effect until such time as Payment in Full has occurred.

SECTION 5.06. Counterparts; Effectiveness; Several Agreement. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective as to any Guarantor when a counterpart hereof (or of a Supplement) executed by such Guarantor shall have been delivered to the Administrative Agent and a counterpart hereof (or of such Supplement) shall have been executed by the Administrative Agent, and thereafter shall be binding upon such Guarantor and the Administrative Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Guarantor, the Administrative Agent and the other Guaranteed Parties and their respective successors and assigns, except that no Guarantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such assignment or transfer shall be void) except as expressly provided in this Agreement and the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Guarantor and may be amended, modified, supplemented, waived or released with respect to any Guarantor without the approval of any other Guarantor and without affecting the obligations of any other Guarantor hereunder.

SECTION 5.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of such invalid, illegal or unenforceable provisions.

SECTION 5.08. Right of Set-Off. Subject to the Carve-Out if an Event of Default under Sections 7.01(a) or (b) of the Credit Agreement shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Guarantor against any of and all the obligations of such Guarantor then due and owing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have



made any demand under this Agreement and although such obligations are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender shall notify the applicable Guarantor and the Agent of such setoff and application; *provided* that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section 5.08. The rights of each Lender under this Section 5.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have; *provided further*, that to the extent prohibited by applicable law as described in the definition of “Excluded Swap Obligation,” no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

**SECTION 5.09. Governing Law; Jurisdiction; Consent to Service of Process; Appointment of Service of Process Agent.**

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York, and, to the extent applicable, the U.S. Bankruptcy Code.

(b) Each party to this Agreement hereby irrevocably and unconditionally submits (except to the extent expressly set out in those Loan Documents which are expressed to be governed by English Law), for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court, and, if the Bankruptcy Court does not have, or abstains from jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Guarantor or its respective properties in the courts of any jurisdiction.

(c) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(e) Each Guarantor hereby irrevocably designates, appoints and empowers the Borrower as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents that may be served in any such action or proceeding.

**SECTION 5.10. WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT



NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.10.

SECTION 5.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 5.12. Termination or Release.

(a) Subject to Section 2.04, this Agreement and the Guarantees made herein shall terminate when Payment in Full has occurred.

(b) The Guarantees made herein shall also terminate and be released at the time or times and in the manner set forth in Section 9.15 of the Credit Agreement. A Loan Party shall also be released from its obligations under this Agreement at the time or times and in the manner set forth in Section 9.15 of the Credit Agreement.

(c) In connection with any termination or release pursuant to paragraph (a) or (b) of this Section, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents by the Administrative Agent pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

SECTION 5.13. Additional Guarantors. Pursuant to the Credit Agreement, any Subsidiary or Intermediate Parent may, or may be required to, become Guarantors after the date hereof. Upon execution and delivery by the Administrative Agent and any Subsidiary or Intermediate Parent of a Supplement, such Subsidiary or Intermediate Parent shall become a Guarantor hereunder with the same force and effect as if originally named as such herein. The execution and delivery of any such instrument shall not require the consent of any other Guarantor hereunder. The rights and obligations of each Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any Subsidiary or Intermediate Parent as a party to this Agreement.

SECTION 5.14. Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Guarantor in respect of any such sum due from it to the Administrative Agent or the Lenders or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Guarantor in the Agreement Currency, such Guarantor agrees, as a separate obligation and notwithstanding any such



judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Guarantor (or to any other Person who may be entitled thereto under applicable law).

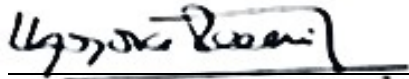
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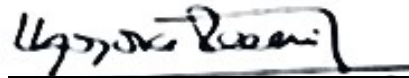
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**GUARANTORS:**

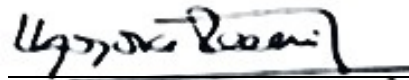
CYXTERA DC HOLDINGS, INC

By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

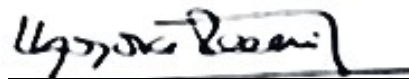
CYXTERA DC PARENT HOLDINGS, INC.

By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

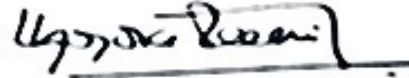
CYXTERA DATA CENTERS, INC.

By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

CYXTERA COMMUNICATIONS, LLC

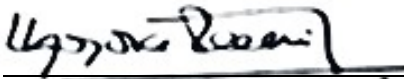
By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

CYXTERA CANADA, LLC

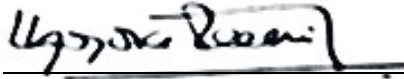
By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer



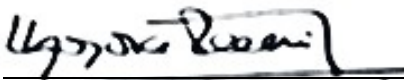
CYXTERA DIGITAL SERVICES, LLC

By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

CYXTERA COMMUNICATIONS CANADA, ULC

By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

CYXTERA CANADA TRS, ULC

By:   
Name: Carlos I. Sagasta  
Title: Executive Vice President and Chief  
Financial Officer

CYXTERA TECHNOLOGY UK LIMITED


By:   
Name: Carlos I. Sagasta  
Title: Director

CYXTERA UK TRS LIMITED

By:   
Name: Carlos I. Sagasta  
Title: Director



**WILMINGTON SAVINGS FUND SOCIETY, FSB,**  
as Administrative Agent

By:   
Name: John McNichol  
Title: Assistant Vice President



**Schedule I**  
**to First Lien Pari Passu Guarantee Agreement**

**INITIAL SUBSIDIARY GUARANTORS**

- CYXTERA DATA CENTERS, INC.
- CYXTERA COMMUNICATIONS, LLC
- CYXTERA CANADA, LLC
- CYXTERA DIGITAL SERVICES, LLC
- CYXTERA COMMUNICATIONS CANADA, ULC
- CYXTERA CANADA TRS, ULC
- CYXTERA TECHNOLOGY UK LIMITED
- CYXTERA UK TRS LIMITED



**Schedule II**

**to Senior Secured Superpriority Debtor-in-Possession Guarantee Agreement**

**GUARANTEE LIMITATIONS**

**Guarantee Limitations for England and Wales**

1. The obligations of each Guarantor organized under the laws of England and Wales under its Guarantee shall not extend to include any obligation or liability to the extent that doing so would constitute unlawful financial assistance (notwithstanding any applicable exemptions and/or undertaking of any applicable prescribed whitewash or similar financial assistance procedures) in respect of the acquisition of, or subscription for, shares in itself or its holding company (as such term is used in the UK Companies Act 2006) under the laws of its jurisdiction of incorporation (including, for the avoidance of doubt, within the meaning of sections 678 or 679 of the UK Companies Act 2006).

**Canadian Guarantee Limitations**

1. For the purposes of the *Interest Act* (Canada) (i) wherever an interest rate or a fee to be paid under this Agreement or under any other Loan Document is calculated using a rate based on a number of days in a year other than the actual number of days in the year of calculation (the “**Alternate Year**”), the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (A) the interest rate or fee, as applicable, multiplied by (B) the actual number of days in the calendar year in which such calculation is being made, divided by (C) the number of days in the Alternate Year; (ii) the principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement or under any other Loan Document; and (iii) the rates of interest stipulated in this Agreement or under any other Loan Document are intended to be nominal rates and not effective rates or yields.
2. Pursuant to Section 8 of the *Interest Act* (Canada), any provision of this Agreement or any other Loan Document that would oblige a Guarantor incorporated or existing under the laws of Canada (or any province or territory thereof) to pay any fine, penalty or rate of interest on any arrears of principal or interest secured by a mortgage on real property or hypothec on immovables that has the effect of increasing the charge on arrears beyond the rate of interest payable on principal money not in arrears shall not apply to such Guarantor, which shall be required to pay interest on money in arrears at the same rate of interest payable on principal money not in arrears.
3. If any provision of any Loan Document would obligate any Guarantor incorporated or existing under the laws of Canada (or any province or territory thereof) to make any payment of interest or other amount payable to any Guaranteed Party in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by such Guaranteed Party of “interest” at a “criminal rate” (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Guaranteed Party of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to such Guaranteed Party under the applicable Loan Document, and thereafter, by reducing any fees, commissions, premiums or other amounts required to be paid to such Guaranteed Party which would constitute “interest” for the purposes of Section 347 of the *Criminal Code* (Canada).
4. To the extent that any limitation period within the meaning of any applicable legislation in Canada (or any province or territory thereof) applies to any claim for payment of the obligations under the Loan Documents (or any portion thereof) or to any remedy for enforcement or the like of such obligations, the Guarantors hereby agree that:



- (i) any such limitation period is expressly excluded and waived entirely if permitted by applicable law;
- (ii) if a complete exclusion and waiver of any such limitation period is not permitted by applicable law, any such limitation period is extended to the maximum length permitted by applicable law;
- (iii) any applicable limitation period shall not begin before an express demand for payment of such obligations is made in writing by the relevant Guaranteed Party to the relevant Guarantor; and
- (iv) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of such obligations by the relevant Guarantor.



**Exhibit A**  
**to First Lien Pari Passu Guarantee Agreement**

SUPPLEMENT NO. \_\_, dated as of \_\_, 20\_\_ (this “Supplement”), to that certain Guarantee Agreement (as defined below), by and [between/among] \_\_, a [jurisdiction] [type of entity] (the “New Guarantor”), and Wilmington Savings Fund Society, FSB, as administrative agent under the Credit Agreement referred to below (in such capacity, the “Administrative Agent”).

A. Reference is made to (i) that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of June 6, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Cyxtera DC Parent Holdings, Inc., a Delaware corporation (“Holdings”), Cyxtera DC Holdings, Inc, a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, Wilmington Savings Fund Society, FSB, as Administrative Agent and collateral agent thereunder, and the various other parties thereto and (ii) that certain Senior Secured Superpriority Debtor-in-Possession Guarantee Agreement, dated as of June 6, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Guarantee Agreement”), by and among Holdings, the Borrower, the Subsidiaries of the Borrower from time to time party thereto and any Intermediate Parent of the Borrower from time to time party thereto (Holdings, the Borrower, such Subsidiaries and such Intermediate Parents party thereto being collectively referred to as the “Guarantors”) and the Administrative Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Guarantee Agreement, as applicable.

C. The Guarantors have entered into the Guarantee Agreement in order to induce the Lenders to extend credit to the Borrower. Section 5.13 of the Guarantee Agreement provides that any Subsidiary or any Intermediate Parent may, or may be required to, become a Guarantor under the Guarantee Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned New Guarantor is executing this Supplement to become a Guarantor under the Guarantee Agreement in order to induce the Lenders to make additional extensions of credit under the Credit Agreement and as consideration for such extensions of credit previously made.

Accordingly, the Administrative Agent and the New Guarantor agree as follows:

SECTION 1. In accordance with Section 5.13 of the Guarantee Agreement, the New Guarantor by its signature below becomes a Guarantor under the Guarantee Agreement with the same force and effect as if originally named therein as a Guarantor, and the New Guarantor hereby agrees to all the terms and provisions of the Guarantee Agreement applicable to it as a Guarantor thereunder, and hereby irrevocably and unconditionally guarantees to each of the Guaranteed Parties, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, by way of an independent payment obligation, the due and punctual payment and performance of the Secured Obligations (other than any Excluded Swap Obligations of the New Guarantor). Each reference to a “[Subsidiary/Intermediate Parent] Guarantor” or a “Guarantor” in the Guarantee Agreement shall be deemed to include the New Guarantor. The Guarantee Agreement is hereby incorporated herein by reference.

SECTION 2. The New Guarantor represents and warrants to the Administrative Agent and the other Guaranteed Parties that (a) the execution, delivery and performance by the New Guarantor of this Supplement have been duly authorized by all necessary corporate or other action and, if required, action by the holders of such New Guarantor’s Equity Interests, and that this Supplement has been duly executed and delivered by the New Guarantor and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization,



moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and (b) all representations and warranties set forth in the Credit Agreement as to the New Guarantor are true and correct in all material respects; provided that any representation and warranty in the Credit Agreement (i) that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects or (ii) that is qualified by knowledge shall, for purposes of this Section 2, be deemed to be a reference to such Guarantor's knowledge.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Supplement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Supplement. This Supplement shall become effective as to the New Guarantor when a counterpart hereof executed on behalf of the New Guarantor shall have been delivered to the Administrative Agent and a counterpart hereof shall have been executed on behalf of the Administrative Agent, and thereafter shall be binding upon the New Guarantor and the Administrative Agent and their respective permitted successors and assigns, and shall inure to the benefit of the New Guarantor, the Administrative Agent and the other Guaranteed Parties and their respective successors and assigns, except that the New Guarantor shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such assignment or transfer shall be void) except as expressly provided in this Supplement, the Guarantee Agreement and the Credit Agreement.

SECTION 4. Except as expressly supplemented hereby, the Guarantee Agreement as in effect immediately prior to the effectiveness of this Supplement shall remain in full force and effect.

**SECTION 5. This Supplement shall be construed in accordance with and governed by the law of the State of New York.**

SECTION 6. Any provision of this Supplement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of such invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 5.01 of the Guarantee Agreement.

SECTION 8. The New Guarantor agrees to reimburse the Administrative Agent for its fees and expenses incurred hereunder and under the Guarantee Agreement as provided in Section 9.03(a) of the Credit Agreement; *provided* that each reference therein to the "Borrower" shall be deemed to be a reference to "each Guarantor".

SECTION 9. Schedule II of the Guarantee Agreement is hereby supplemented with the principles set forth in Schedule I hereto, if any, and such principles shall become part of Schedule II of the Guarantee Agreement and the guarantee limitations.

*[Remainder of Page Intentionally Blank]*



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[NEW GUARANTOR], as New Guarantor

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:



Schedule I to

**Supplement No. [ ] to the Senior Secured Superpriority Debtor-in-Possession Guarantee Agreement**

**GUARANTEE LIMITATIONS**

1. [The obligations of each Guarantor organized under the laws of England and Wales under its Guarantee shall not extend to include any obligation or liability to the extent that doing so would constitute unlawful financial assistance (notwithstanding any applicable exemptions and/or undertaking of any applicable prescribed whitewash or similar financial assistance procedures) in respect of the acquisition of, or subscription for, shares in itself or its holding company (as such term is used in the UK Companies Act 2006) under the laws of its jurisdiction of incorporation (including, for the avoidance of doubt, within the meaning of sections 678 or 679 of the UK Companies Act 2006).]<sup>1</sup>

1. [For the purposes of the *Interest Act* (Canada) (i) wherever an interest rate or a fee to be paid under this Agreement or under any other Loan Document is calculated using a rate based on a number of days in a year other than the actual number of days in the year of calculation (the “**Alternate Year**”), the rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (A) the interest rate or fee, as applicable, multiplied by (B) the actual number of days in the calendar year in which such calculation is being made, divided by (C) the number of days in the Alternate Year; (ii) the principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement or under any other Loan Document; and (iii) the rates of interest stipulated in this Agreement or under any other Loan Document are intended to be nominal rates and not effective rates or yields.

2. Pursuant to Section 8 of the *Interest Act* (Canada), any provision of this Agreement or any other Loan Document that would oblige a Guarantor incorporated or existing under the laws of Canada (or any province or territory thereof) to pay any fine, penalty or rate of interest on any arrears of principal or interest secured by a mortgage on real property or hypothec on immovables that has the effect of increasing the charge on arrears beyond the rate of interest payable on principal money not in arrears shall not apply to such Guarantor, which shall be required to pay interest on money in arrears at the same rate of interest payable on principal money not in arrears.

3. If any provision of any Loan Document would obligate any Guarantor incorporated or existing under the laws of Canada (or any province or territory thereof) to make any payment of interest or other amount payable to any Guaranteed Party in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by such Guaranteed Party of “interest” at a “criminal rate” (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by such Guaranteed Party of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary, as follows: firstly, by reducing the amount or rate of interest required to be paid to such Guaranteed Party under the applicable Loan Document, and thereafter, by reducing any fees, commissions, premiums or other amounts required to be paid to such Guaranteed Party which would constitute “interest” for the purposes of Section 347 of the *Criminal Code* (Canada).

4. To the extent that any limitation period within the meaning of any applicable legislation in Canada (or any province or territory thereof) applies to any claim for payment of the obligations under the

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<sup>1</sup> Note to Draft: To be included for any Guarantor organized under the laws of England and Wales.



Loan Documents (or any portion thereof) or to any remedy for enforcement or the like of such obligations, the Guarantors hereby agree that:

- (a) any such limitation period is expressly excluded and waived entirely if permitted by applicable law;
- (b) if a complete exclusion and waiver of any such limitation period is not permitted by applicable law, any such limitation period is extended to the maximum length permitted by applicable law;
- (c) any applicable limitation period shall not begin before an express demand for payment of such obligations is made in writing by the relevant Guaranteed Party to the relevant Guarantor; and
- (d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of such obligations by the relevant Guarantor.]<sup>2</sup>

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<sup>2</sup> Note to Draft: To be included for any Guarantor organized under the laws of Canada or any province thereof.