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| COURT FILE NUMBER | 2301 – 03785 |
| COURT | COURT OF KING'S BENCH OF ALBERTA |
| JUDICIAL CENTRE | CALGARY |

Clerk's Stamp

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| APPLICANTS | IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED<br><br>AND IN THE MATTER OF CYXTERA TECHNOLOGIES, INC. CYXTERA CANADA, LLC, CYXTERA COMMUNICATIONS CANADA, ULC AND CYXTERA CANADA TRS, ULC |
| DOCUMENT | **FIFTH REPORT OF THE INFORMATION OFFICER**<br><br>**November 17, 2023** |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | **INFORMATION OFFICER**<br>ALVAREZ & MARSAL CANADA INC.<br>Bow Valley Square IV<br>Suite 1110, 250 - 6th Avenue SW<br>Calgary, Alberta T2P 3H7<br>Attention: Orest Konowalchuk<br>Telephone: (403) 538-4736<br>Email: okonowalchuk@alvarezandmarsal.com<br><br>**COUNSEL TO THE INFORMATION OFFICER**<br>McMillan LLP<br>1700, 421 – 7th Avenue SW<br>Calgary, Alberta T2P 4K9<br>Adam Maerov / Preet Saini<br>Telephone: (403) 215-2752 / (403) 531-4716<br>Email: adam.maerov@mcmillan.ca / Preet.Saini@mcmillan.ca |

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## APPENDICES

## INTRODUCTION

Cyxtera Chapter 11 Proceedings

1. On June 4, 2023 (the "**Petition Date**"):

    a) Delaware incorporated entities Cyxtera Technologies, Inc. ("**CTI**") and Cyxtera Canada, LLC ("**Cyxtera LLC**");

    b) Alberta incorporated entities Cyxtera Communications Canada, ULC ("**Communications ULC**") and Cyxtera Canada TRS, ULC ("**TRS ULC**") (collectively "**Cyxtera Canada**"); and

    c) twelve other non-Canadian registered affiliates;

    (each a "**Debtor**" and collectively, the "**Debtors**", and together with their direct and indirect non-Debtor affiliates, "**Cyxtera**" or the "**Cyxtera Group**"),

    commenced voluntary reorganization proceedings[1] (the "**Chapter 11 Proceedings**") pursuant to Chapter 11 of the U.S. Code (the "**U.S. Bankruptcy Code**") before the United States Bankruptcy Court District of New Jersey (the "**U.S. Bankruptcy Court**"). A list of all the Debtors is attached hereto as **Appendix "A"**.

2. On June 6, 2023, the U.S. Bankruptcy Court granted various interim and final orders in the Chapter 11 Proceedings (the "**First Day Orders**"), including an order (the "**Foreign Representative Order**") authorizing CTI to act as foreign representative of Cyxtera Canada and Cyxtera LLC (in such capacity, the "**Foreign Representative**") in a proceeding to be commenced in the Court of King's Bench of Alberta (the "**Canadian Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and these proceedings the "**CCAA Recognition Proceedings**", and together with the Chapter

[1] On June 6, 2023, the U.S. Bankruptcy Court granted an order directing, for procedural purposes only, joint administration of the Chapter 11 Proceedings as Cyxtera Technologies Inc. *et al*. (the "**Joint Administration Order**"). This order does not provide for consolidation for substantive purposes.

11 Proceedings, the "**Restructuring Proceedings**"). The Foreign Representative Order also authorizes CTI to:

a) seek recognition of the Chapter 11 Proceedings in a proceeding in Canada;

b) request that the Canadian Court lend assistance to the U.S. Bankruptcy Court in protecting the property within the estates of the Debtors; and

c) seek any other appropriate relief from the Canadian Court that CTI deems just and proper in furtherance of the protection of the Debtors' estates.

CCAA Recognition Proceedings

3. On June 7, 2023, and as previously defined and discussed in prior reports[2], the Foreign Representative obtained two orders from the Canadian Court, namely an Initial Recognition Order and Supplemental Recognition Order, which, among other things, appointed Alvarez & Marsal Canada Inc. as information officer in respect of the CCAA Recognition Proceedings (in such capacity, the "**Information Officer**") and granted certain super-priority charges over the Debtors' Canadian assets, specifically the Administration Charge and the DIP Lender's Charge, as such terms described in the Pre-Filing Report.

4. In addition, the Supplemental Recognition Order recognized and gave effect in Canada to several of the First Day Orders of the U.S. Bankruptcy Court, including, among others, the Foreign Representative Order, Joint Administration Order, and several other First Day Orders of the U.S. Bankruptcy Court, including the interim Cash Management Order and the interim DIP Financing Order.

[2] The Pre-Filing Report of the Proposed Information Officer dated June 7, 2023 ("**Pre-Filing Report**"), the First Report of the Information Officer dated June 30, 2023 (the "**First Report**"), the Second Report of the Information Officer dated July 28, 2023, the Third Report of the Information Officer dated September 1, 2023 and the Fourth Report of the Information Officer dated October 6, 2023 (the "**Fourth Report**") are collectively referred to as the "**Prior Information Officer Reports**".

5. Between June and October 2023, the Foreign Representative obtained orders from the Canadian Court including, among other matters, recognizing and giving effect in Canada to the second, third, fourth, and fifth interim Cash Management Orders, a final DIP Financing Order, the Bidding Procedures Order, the Bar Date Order and the Disclosure Statement Order (each as defined and discussed in the Prior Information Officer Reports).

6. Further information regarding these CCAA Recognition Proceedings can be found on the Information Officer's website at www.alvarezandmarsal.com/CyxteraCanada (the "**Case Website**"). Copies of documents filed in the Chapter 11 Proceedings can be found on the case website maintained by Kurtzman Carson Consultants LLC ("**KCC**") at: www.kccllc.net/Cyxtera (the "**Chapter 11 Website**"), which can also be accessed via the Case Website.

**TERMS OF REFERENCE AND DISCLAIMER**

7. In preparing this Fifth Report of the Information Officer (the "**Fifth Report**"), the Information Officer has relied solely on information and documents provided by the Foreign Representative, their financial advisor, their U.S. and Canadian legal counsel and documents filed on the U.S. Bankruptcy Court docket located on the Chapter 11 Website (collectively, the "**Information**"). Except as otherwise described in this Fifth Report, the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**Handbook**"), and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

8. This Fifth Report should be read in conjunction with the Affidavit of Mr. Raymond Li sworn November 17, 2023 (the "**Li Affidavit**") and the affidavits of Mr. Eric

Koza[3], which have been sworn and filed in connection with the CCAA Recognition Proceedings.

9. Unless otherwise stated, all monetary amounts contained herein are expressed in USD.

## PURPOSE OF THIS FIFTH REPORT

10. The purpose of this Fifth Report is to provide the Canadian Court with information or additional information regarding the following:

    a) the status of the Chapter 11 Proceedings;

    b) the Orders of the U.S. Bankruptcy Court, of which the Foreign Representative and Canadian Debtors are seeking recognition of in Canada, including the Confirmation Order and the Cologix Transaction Order (each as defined and described below);

    c) the activities of the Information Officer since the date of the Fourth Report;

    d) CTI's request for approval of the professional fees and costs of the Information Officer up to October 31, 2023, Cyxtera Canada's legal counsel, Gowling WLG (Canada) LLP ("**Gowling**") up to November 14, 2023, and the Information Officer's legal counsel, McMillan LLP ("**McMillan**") up to October 31, 2023; and

    e) the Information Officer's conclusions and recommendations.

## STATUS OF THE CHAPTER 11 PROCEEDINGS

11. Cyxtera expected to use the Chapter 11 Proceedings to strengthen the Debtors' financial position, meaningfully deleverage their balance sheet and facilitate the

[3] The Affidavit of Mr. Koza sworn June 6, 2023 (the "**First Koza Affidavit**"), the Affidavit of Mr. Koza sworn June 30, 2023, the Affidavit of Mr. Koza sworn July 27, 2023, the Affidavit of Mr. Koza sworn September 1, 2023, and the Affidavit of Mr. Koza sworn October 5, 2023 are collectively referred to as the "**Koza Affidavits**".

business's long-term success. Throughout the Chapter 11 Proceedings, Cyxtera continued to operate its global platform of highly interconnected data centers without interruption.

12. As described more fully in the First Koza Affidavit, in March 2023, the Debtors, with the assistance of their advisors, launched a comprehensive marketing process (the "**Prepetition Marketing Process**") to engage interested third parties in a potential sale transaction. The Prepetition Marketing Process ran in parallel with the Company's engagement with the ad hoc group of first lien lenders and their advisors (the "**Ad Hoc Group**") regarding the terms of a comprehensive restructuring transaction.

13. The Debtors commenced the Chapter 11 Proceedings with a restructuring support agreement (the "**RSA**"), which contemplated a dual-track toggle process whereby the Debtors would pursue a recapitalization of their balance sheet (the "**Recapitalization Transaction**") that equitizes the first lien indebtedness while concurrently continuing the Prepetition Marketing Process to determine whether a higher or otherwise better transaction could be consummated through the sale of the Debtors' assets.

Bidding Procedures

14. On June 29, 2023, the U.S. Bankruptcy Court entered an Order through a certificate of no objection (the "**Bidding Procedures Order**") (i) Approving the Bidding Procedures ("**Bidding Procedures**") and Auction, (ii) Approving the Stalking Horse Bid Protections, (iii) Scheduling Bid Deadlines and an Auction, and (iv) Approving the Form and Manner of Notice Thereof. On July 12, 2023, the Foreign Representative obtained an order from the Canadian Court recognizing and giving effect in Canada to the Bidding Procedures Order.

15. The Bidding Procedures provided further opportunity to market (i) the equity interests (the "**New Equity Interests**") issued by a reorganized CTI, or any successor or assignee, by merger, consolidation, or otherwise, on and after the effective date of a plan pursuant to the U.S. Bankruptcy Code and/or (ii) some or

all of the Debtors' assets (the "**Assets**", and collectively, with the New Equity Interests, the "**Sale Package**"), to receive and evaluate any additional bids, and, if necessary, hold an auction to determine the highest or otherwise best bid. The Debtors expressed the view that the Bidding Procedures also provided the best path to (a) garner additional interest in the Sale Package, (b) receive the highest recovery available for all stakeholders, and (c) conduct a market check on the value of the proposed recoveries to holders of claims and interests contemplated by the Recapitalization Transaction.

16. The Bidding Procedures are described further in the First Report and attached thereto. As previously reported, on August 22, 2023, the Debtors provided notice that they received multiple bids; however, none of these bids were Qualified Bids (as defined in the Bidding Procedures). At the time, the Debtors did not believe that any of the bids received were more value-maximizing than the Recapitalization Transaction proposed under the Joint Plan (as defined below). Accordingly, on August 29, 2023, the Debtors notified parties-in-interest that the Debtors, in accordance with the Bidding Procedures Order and in consultation with the Ad Hoc Group and the official committee of unsecured creditors (the "**UCC**"), had cancelled the Auction scheduled to occur on August 30, 2023.

17. Negotiations with certain bidders remained ongoing, and the Joint Plan provides flexibility for the Debtors to "toggle" to a Sale Transaction should one develop that is more value-maximizing than the Recapitalization Transaction. As discussed below, a "Sale Transaction Notice Deadline" (the date that is no later than seven (7) days prior to the Voting Deadline) has been established as the deadline for the Debtors to "toggle" to a Sale Transaction. As explained below, the Voting Deadline was initially October 26, 2023, but was amended three times to the latest (and final) date which was November 7, 2023.

18. On October 19, 2023, the Debtors provided notice of the amendment of certain deadlines (the "**Amended Confirmation Dates Notice**"). Specifically, the Amended Confirmation Dates Notice modified the following dates, which were

previously approved by the Disclosure Statement Order and recognized by the Canadian Court on October 11, 2023:

| Action | Original Deadline | Amended Deadline |
|---|---|---|
| Voting Deadline | October 26, 2023 at 4:00 p.m. EST | November 2, 2023 at 4:00 p.m. EST |
| Confirmation Objection Deadline | October 26, 2023 at 4:00 p.m. EST | November 2, 2023 at 4:00 p.m. EST |
| Deadline to File Voting Report | November 2, 2023 | November 10, 2023 |
| Confirmation Brief and Confirmation Objection Reply Deadline | November 2, 2023 | November 10, 2023 |
| Confirmation Hearing | November 6, 2023 at 10:00a.m. EST, or such other date as may be scheduled by the U.S. Bankruptcy Court | November 16, 2023 at 2:00p.m. EST, or such other date as may be scheduled by the U.S. Bankruptcy Court |

19. On October 26, 2023 and October 30, 2023, the Debtors provided notice of the following further amended dates:

| Action | 2nd Amended Deadline | 3rd Amended Deadline |
|---|---|---|
| Voting Deadline | November 6, 2023 at 4:00 p.m. EST | November 7, 2023 at 4:00 p.m. EST |
| Confirmation Objection Deadline | November 6, 2023 at 4:00 p.m. EST | November 7, 2023 at 4:00 p.m. EST |
| Deadline to File Voting Report | November 13, 2023 | November 14, 2023 |
| Confirmation Brief and Confirmation Objection Reply Deadline | November 13, 2023 | November 14, 2023 |
| Confirmation Hearing | November 16, 2023 at 2:00p.m. EST, or such other date as may be scheduled by the U.S. Bankruptcy Court | November 16, 2023 at 2:00p.m. EST, or such other date as may be scheduled by the U.S. Bankruptcy Court |

20. On November 1, 2023, the Debtors provided notice that they reached an agreement on the terms of a value-maximizing asset sale with Phoenix Data Center Holdings LLC, an affiliate of Brookfield Infrastructure Partners L.P. ("**Brookfield**"), and, with the consent of the holders of the first lien claims holding at least 66.67% of the aggregate outstanding principal amount of the term loans (the "**Required**

**Consenting Term Lenders**"), have "toggled" to a proposed asset sale under the Joint Plan (the "**Brookfield Transaction**"). Pursuant to the terms of the proposed Brookfield Transaction, Brookfield will, among other things, purchase substantially all of the Debtors' assets (the "**Acquired Brookfield Assets**") in exchange for $775 million in cash, subject to certain adjustments. A copy of the asset purchase agreement dated October 31, 2023 by and between CTI (together with certain of its Debtor affiliates and subsidiaries) and Brookfield (the "**Brookfield APA**") is attached hereto as **Appendix "B"**.

Other Chapter 11 Proceeding Matters

21. On June 20, 2023, the United States Trustee for Regions 3 and 9 (the "**U.S. Trustee**"), pursuant to Section 1102(a) of the U.S. Bankruptcy Code, appointed five creditors to the UCC.

22. On June 29, 2023, the U.S. Bankruptcy Court entered through a certificate of no objection, an Order Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases (the "**Contract Rejection/Assumption Procedures Order**"). The Contract Rejection/Assumption Procedures Order provided the procedures for rejecting or assuming executory contracts and unexpired leases. Included in the procedures for assuming and assuming and assigning contracts, the Debtors must include the effective date of the assumption for each contract and the proposes cure amount (the "**Cure Amount**"). Parties were provided with ten days to object to the proposed assumption or assumption and assignment (including as to the Cure Amount) and required to file a written objection with the various affected parties and the U.S. Bankruptcy Court.

23. On July 19, 2023, the U.S. Bankruptcy Court entered an Order through a certificate of no objection (the "**Bar Date Order**") (i) Setting Bar Dates for Submitting Proofs of Claim, including Requests for Payment Under Section 503(b)(9) of the U.S. Bankruptcy Code, (ii) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (iii) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, and (iv) Approving the Notice Thereof. On July 31,

2023, the Foreign Representative obtained an order from the Canadian Court recognizing and giving effect in Canada to the Bar Date Order.

24. On August 7, 2023, the Debtors filed a joint plan of reorganization on behalf of CTI and its Debtor affiliates. On August 15, 2023, the Debtors submitted a disclosure statement, pursuant to section 1125 of the U.S. Bankruptcy Code, to holders of claims against the Debtors in connection with the solicitation of votes for acceptance of the joint plan.

25. The Debtors filed an amended joint plan of reorganization on September 13, 2023, a second amended joint plan of reorganization on September 24, 2023, a third amended joint plan of reorganization on November 3, 2023 and a fourth amended joint plan of reorganization on November 13, 2023 (the "**Joint Plan**").

26. The Debtors filed a revised disclosure statement on September 13, 2023 and an additional revised disclosure statement on September 24, 2023 (the "**Disclosure Statement**").

27. On September 26, 2023, the U.S. Bankruptcy Court granted an Order (the "**Disclosure Statement Order**") approving (i) the Adequacy of the Disclosure Statement, (ii) the Solicitation Procedures, (iii) the Forms of Ballots and Notices in Connection Therewith, and (iv) Certain Dates with Respect Thereto. Among other things, the Disclosure Statement Order established the hearing at which the U.S. Bankruptcy Court will consider confirmation of the Joint Plan (the "**Confirmation Hearing**"). On October 11, 2023, the Foreign Representative obtained an order from the Canadian Court recognizing and giving effect in Canada to the Disclosure Statement Order.

28. The Confirmation Hearing was heard on November 16, 2023 at 2:00p.m. EST and the Order (the "**Confirmation Order**") Confirming the Fourth Amended Joint Plan of CTI and its Debtor Affiliates Pursuant to Chapter 11 of the U.S. Bankruptcy code was granted effective December 17, 2023.

29. A copy of the Confirmation Order is attached hereto as **Appendix "C"**.

## FOURTH AMENDED JOINT PLAN & DISCLOSURE STATEMENT

Disclosure Statement

30. A copy of the Disclosure Statement was attached to the Fourth Report. The Disclosure Statement includes, among other things:

a) an overview of the Debtors' prepetition business operations and organizational and capital structure;

b) an overview of the events leading to the Chapter 11 Proceedings;

c) a detailed review of the steps in the Chapter 11 Proceedings, including a description of the Bidding Procedures;

d) an extensive summary of the Joint Plan;

e) a description of risk factors in respect of the Joint Plan relevant to claimholders;

f) a description of the solicitation and voting procedures to accept or reject the Joint Plan, including the voting record date and the deadline for delivery of votes to the claims and noticing agent;

g) a summary of the process for confirmation of the Joint Plan, including a description of the statutory requirements for confirmation;

h) a summary of certain securities law matters, U.S. federal income tax consequences and certain Canadian federal income tax consequences of the Joint Plan;

i) a recommendation from the Debtors and the UCC to voting claimholders to vote in favour of the Joint Plan; and

j) a copy of the Joint Plan, a liquidation analysis and a five-year financial projection demonstrating the feasibility of the Plan.

Fourth Amended Joint Plan

31. A copy of the Joint Plan is Exhibit A to the Confirmation Order.

32. The Joint Plan will become effective once there is no stay of the Confirmation Order in effect and when all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Joint Plan have been satisfied or waived in accordance with Article IX.B of the Joint Plan (the "**Effective Date**").

33. Although for purposes of administrative convenience and efficiency the Joint Plan has been filed as a joint plan for all of the Debtors and presents together classes of claims against, and interests in, the Debtors, the Joint Plan does not provide for the substantive consolidation of any of the Debtors.

Treatment of Stakeholders

34. Under the Joint Plan with the proposed Brookfield Transaction, estimated recoveries for holders of Class 3 First Lien Claims is approximately 67.6% on account of their First Lien Claims. Estimated recoveries for holders of claims in any other class under the Joint Plan remains unchanged as compared to the Recapitalization Transaction.

35. The following table summarizes the classification, treatment and voting rights of creditors under the Joint Plan with the proposed Brookfield Transaction:

| Class | Claim or Interest | Treatment | Voting Rights |
|---|---|---|---|
| 1 | Other Secured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 2 | Other Priority Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| 3 | First Lien Claims | Impaired | Entitled to Vote |
| 4 | General Unsecured Claims | Impaired | Entitled to Vote |
| 5 | Section 510(b) Claims | Impaired | Not Entitled to Vote (Deemed to Reject) |
| 6 | Intercompany Claims | Unimpaired/ Impaired | Not Entitled to Vote (Deemed to Accept)/ Not Entitled to Vote (Deemed to Reject) |
| 7 | Intercompany Interests | Unimpaired/ Impaired | Not Entitled to Vote (Deemed to Accept)/ Not Entitled to Vote |

| | | | |
|---|---|---|---|
| | | | (Deemed to Reject) |
| 8 | Existing Equity Interests | Impaired | Not Entitled to Vote (Deemed to Reject) |

36. Under the Joint Plan, the Debtors are required to pay Allowed Administrative Claims in full. Administrative Claims consist of Claims for costs and expenses of administration of the Estates, actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the business, Adequate Protection Claims, Restructuring Expenses, the Disinterested Director Fee Claims, the Canadian Fee Claims and the Breakup Fee and Expense Reimbursement, to the extent payable under the Brookfield APA.

37. On September 22, 2023, the Debtors, the UCC, and the Required Consenting Term Lenders reached an agreement regarding the UCC's potential challenges under the Final DIP Order and the UCC's potential objection to the Disclosure Statement. The resolution with the UCC is reflected in the Joint Plan and provides substantial value to holders of general unsecured claims in the form of $8.65 million in cash (the "**GUC Trust Assets**"). Accordingly, the UCC is supportive of the Joint Plan and recommended that holders of Class 4 General Unsecured Claims vote in favor of the Joint Plan. The projected allowed amount of Class 4 General Unsecured Claims is between $80 million and $90 million and therefore the estimated recovery for general unsecured creditors is 9.6% - 10.8%.

Releases, Exculpation and Injection Provisions

38. The Joint Plan includes certain Debtor and third-party releases, an exculpation provision, and an injunction provision. As discussed below, on November 1, 2023, the U.S. Trustee filed an objection to the Joint Plan citing overbroad exculpation provisions, overbroad release provisions, impermissible third-party release provisions on the basis that they are not consensual, and improper injunction provisions. Capitalized terms used and not defined in paragraphs 39 to 43 have the meaning given to them in the Joint Plan.

39. As described in the Joint Plan, each Released Party is deemed conclusively, absolutely, unconditionally, irrevocably and forever released and discharged by the Debtors, their Estates, the Plan Administrator and all other Persons that may assert Causes of Action derivatively, from any and all claims and Causes of Action that the Debtors, their Estates, the Plan Administrator or their Affiliates would have been legally entitled to assert in their own right or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to the Debtors, the Estates, the Chapter 11 Proceedings, the Restructuring Transactions, the purchase or sale of any security of the Debtors; the First Lien Facilities, the Bridge Facility, the DIP Facility, the Sale Transaction or the Joint Plan, but such release does not detract from the obligation to perform the Joint Plan. "Released Party" is defined as the Debtors, Consenting Stakeholders, Releasing Parties, each Agent, each DIP Lender, the Purchaser, the UCC and each member thereof, each affiliate thereof, and each Related Party thereto.

40. The Joint Plan provides that, except as provided in the Joint Plan, Confirmation Order or Purchase Agreement, the Released Parties are released by the Releasing Parties from all Claims related to the Debtors, the Estates, the Chapter 11 Proceedings, and the Restructuring Transactions or related interactions on any matter before the Effective Date, other than any obligation to perform the Joint Plan.

41. Exculpated Parties are also released and exculpated from, any Claim or Cause of Action arising prior to the Effective Date in connection with the Chapter 11 Proceedings, the RSA, the Restructuring Transactions, the First Lien Facilities, the Bridge Facility, the DIP Facility, the Disclosure Statement, the Plan Supplement, the Sale Transaction, the Purchase Agreement, the confirmation of the Plan, the occurrence of the Effective Date, the administration of or distributions under the Plan.

42. The Joint Plan provides for certain carve outs from the release for an Exculpated Party for Claims arising out of any act or omission that is criminal, constitutes

actual fraud, wilful misconduct or gross negligence as determined by a Final Order. Exculpated Parties are defined as the Debtors, the UCC and its members, the Plan Administrator and their related Parties.

43. The Joint Plan also provides that no Entity, including a Governmental Unit, shall discriminate against the Debtors, or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise or similar grant to, or condition or discriminate with respect to such grant, solely because the Debtors have been subject to the Chapter 11 Proceedings or have been insolvent.

Plan Supplement

44. The Debtors filed a plan supplement on November 3, 2023 (the "**Plan Supplement**"). A copy of the Plan Supplement (without the Schedules of Assumed and Rejected Executory Contracts and Unexpired Leases) is attached hereto as **Appendix "D"**. The entire Plan Supplement, including 472 pages of Assumed Executory Contracts and Unexpired Leases, can be found on the Chapter 11 Website. The Debtors filed an amended plan supplement on November 16, 2023 (the "**Amended Plan Supplement**") with an updated Schedule of Assumed Executory Contracts and Unexpired Leases.

45. The Plan Supplement contained drafts of the following documents:

a) Draft Schedule of Retained Causes of Action: this schedule contains causes of actions related to (i) taxes, (ii) insurance policies, and (iii) disputed claims;

b) Draft Restructuring Transactions Memorandum: this is discussed in further detail below;

c) Draft Schedules of Assumed and Rejected Executory Contracts and Unexpired Leases

i. Draft Schedule of Assumed Executory Contracts and Unexpired Leases: this schedule contains various Communications ULC counterparties (including to landlords of the Canadian leases,

Garrison DC Holdings Pte[4] and Neamsby Investments Inc.[5]) with contracts to be assumed;

ii. Draft Schedule of Rejected Executory Contracts and Unexpired Leases: this schedule contains two Communications ULC counterparties (Jani-King of Southern Ontario and Manufacturers Life Insurance Company) with contracts to be rejected. Pursuant to the Joint Plan, damages arising from the rejection of contracts will be treated as General Unsecured Claims (as defined in the Joint Plan).

d) GUC Trust Agreement: this is an agreement between the Debtors and a trustee establishing the terms and conditions for the creation and operation of the trust responsible for collecting, holding, administering, distributing and liquidating the GUC Trust Assets to the general unsecured creditors (the "**GUC Trust**"); and

e) Plan Administrator Agreement: this is an agreement setting forth the rights, powers, obligation and compensation of the person selected to administer all assets vested in the post-Effective Date Debtors.

Draft Restructuring Transactions Memorandum

46. The Debtors currently anticipate that the Joint Plan will be consummated through asset sales and that the restructuring transactions will occur pursuant to the following steps. Unless otherwise set forth below, the steps will occur on or before the Effective Date and in the order listed below:

a) prior to the Effective Date, the Debtors will consummate certain asset sales;

[4] The Garrison DC Holdings Pte Cure Amount was listed at USD$240,118 in the Plan Supplement and USD$317,222 in the Amended Plan Supplement.

[5] The Neamsby Investment Inc. Cure Amount was listed at USD$155,708 in the Plan Supplement and USD$205,708 in the Amended Plan Supplement.

b) prior to the Effective Date, the Debtors will, and will cause their non-Debtor affiliates to, consummate certain internal restructuring steps (including the cancellation, contribution, distribution or other resolution of certain Debtor intercompany claims and other outstanding intercompany accounts) as required by the Brookfield APA;

c) on and contemporaneously with the Effective Date, pursuant to and in accordance with the Brookfield APA and the Joint Plan, the Debtors will, and will cause their non-Debtor Affiliates to, consummate the sale of the Acquired Assets (as defined in the Brookfield APA) to, and the assumption of the Assumed Liabilities (as defined in the Brookfield APA) by, Brookfield as well as the other transactions contemplated by the Brookfield APA;

d) following the consummation of the asset sales occurring pursuant to Steps a) and c), the Debtors or the post-Effective Date Debtors, as applicable, shall make payments required by the Joint Plan to holders of claims and other parties entitled to such payments pursuant to the Joint Plan, other than to holders of general unsecured claims;

e) on the Effective Date, the Debtors will transfer the GUC Trust Assets to the GUC Trust. Thereafter, the GUC Trust will distribute all of the interests in the GUC Trust to holders of general unsecured claims *pro rata* in full satisfaction and discharge of their claims pursuant to the Joint Plan;

f) on the Effective Date, subject to the terms of the Brookfield APA, remaining Debtor intercompany claims may, but will not necessarily, be cancelled, contributed, distributed, or otherwise resolved, as determined by the Debtors and reflected in the books and records thereof; and

g) subject to the terms of the Brookfield APA, as soon as reasonably practicable following the Effective Date, the Debtors shall be liquidated and dissolved.

**FOURTH AMENDED JOINT PLAN CONFIRMATION**

47. The Confirmation Objection Deadline was November 7, 2023 at 4:00p.m. EST.

48. On November 1, 2023, the U.S. Trustee filed an objection to the Joint Plan citing overbroad exculpation provisions, overbroad release provisions, impermissible third-party release provisions as they are not consensual, and improper injunction provisions.

49. On November 7, 2023, there were three additional limited objections filed:

a) EastGroup Properties, LP, a landlord in Florida, objected that (a) the proposed Cure Amount and that it did not include additional amounts which have accrued and continue to accrues; and (b) the lack of financial information necessary to assure the future performance of the proposed assignee;

b) ACPF Nova Data Center, LLC and RREEF CPIF 2425 Busse Road, LLC, landlords in Sterling, VA and Elk Grove Village, IL, objected that (a) the proposed Cure Amount and that it did not include additional amounts which have accrued and continue to accrues; and (b) the lack of financial information necessary to assure the future performance of the proposed assignee; and

c) Oracle Canada ULC and Oracle America, Inc., creditor and contract counterparty objected that (a) certain unauthorized sharing of Oracle's licenses and the inability to assign licenses of intellectual property which are not assignable absent their consent; (b) the possibility that certain contracts have expired; and (c) the lack of financial information necessary to assure the future performance of the proposed assignee.

50. Since the Confirmation Objection Deadline, there have also been limited objections filed by Maricopa County Treasurer relating to the treatment of property taxes, NVIDIA Corporation relating to confusing and contradictory information set forth in the Plan Supplement, Microsoft Corporation relating to incorrect Cure Amounts,

1919 Park Avenue Associated, LLC relating to a lease in Weehawken, NJ with incorrect Cure Amounts and SI POR02 ABS LLC and DCCO Tukwila, LLC related to leases in Hillsboro, OR and Tukwila, WA with incorrect Cure Amounts.

51. The Debtors and the U.S. Trustee resolved a number of the objections prior to the Confirmation Hearing. At the Confirmation Hearing, two of the remaining U.S. Trustee objections were overruled and one of the objection was resolved by making minor amendments to the language in the Confirmation Order. All other objections were resolved prior to the Confirmation Hearing.

52. The Voting Deadline was November 7, 2023 at 4:00p.m. EST. The Debtors filed the Voting Report on November 14, 2023. The Debtors reported that approximately 454 creditors (representing dollar amounts in excess of $970 million) voted affirmatively in favor of the Joint Plan, with an approximate 99% in number (and 99% in value) voting to accept and an approximate 1% voting to reject, as summarized in the following table:

| Tabulation Summary | For/Against | # of Votes | % of Votes | Dollar Value | % of Dollar Value |
|---|---|---|---|---|---|
| **Class 3 Ballots** (First Lien Creditors) | For | 393 | 100% | $919,446,609.77 | 100% |
| | Against | 0 | 0% | $0.00 | 0% |
| **Class 4 Ballots** (General Unsecured Creditors) | For | 61 | 95% | $50,788,075.41 | 85% |
| | Against | 3 | 5% | $9,091,895.07 | 15% |

53. To conclude, the requisite votes were reported in favor of the Joint Plan and the objections filed to the Joint Plan have been settled.

54. As noted above, the Confirmation Hearing was heard on November 16, 2023 at 2:00p.m. EST and the Confirmation Order was granted effective November 17, 2023.

**CANADIAN LEASES**

55. As reported in the Pre-Filing Report, Communications ULC operates four (4) data centres located in British Columbia, Ontario and Québec (the "**Canadian Data**

**Centres**") that are all leased with different landlords. The Canadian Data Centres are purpose-built technology hubs that offer on-demand infrastructure solutions to Cyxtera's Canadian customers. An overview of the Canadian Data Centres, with further details contained in the Pre-Filing Report, are as follows:

a) two Canadian Data Centres in Mississauga and Markham Ontario (the "**YYZ Facilities**");

b) one data centre located in Vancouver, British Columbia ("**YVR Facility**"); and

c) one data centre located in Montreal, Québec (the "**YUL Facility**").

56. Details of the leases of the Canadian Data Centres are as follows:

a) base rent of the YYZ Facilities is approximately CDN$293,000/month between both leased spaces in Ontario and these leases expires within five to ten years;

b) base rent of the YVR Facility is approximately CDN$44,224/month and the lease expires on May 31, 2028; and

c) base rent of the YUL Facility is approximately CDN$14,080/month and the lease expires on February 28, 2026.

57. The YYZ Facilities are included in the proposed Brookfield Transaction as assumed and assigned leases and part of the Acquired Assets (as defined in the Brookfield APA). As discussed previously, the Plan Supplement includes a Schedule of Assumed Executory Contracts and Unexpired Leases which contains various Communications ULC counterparties (including to landlords Garrison DC Holdings Pte and Neamsby Investments Inc.) that are party to contracts to be assumed. As discussed below, the Debtor's U.S. counsel advised that KCC served notice of filing of the Plan Supplement on the affected Canadian parties as well as a cure notice for each counterparty on the Schedule of Assumed Executory Contracts and Unexpired Leases.

58. The YVR Facility and YUL Facility leases are included in the proposed Cologix

Transaction (as defined below) as assumed and assigned leases as part of the sale of the Acquired Business (as defined in the Cologix APA described below).

59. In addition to the procedures specified in the Contract Rejection/Assumption Procedures Order, the Debtors sent notices requesting consent to the assumption and assignment of executory contracts and unexpired leases affecting Canadian counterparties (the "**Canadian Consent Requests**").

60. The YVR Facility and YUL Facility are contemplated to be sold with leases assigned to Cologix if the Cologix Transaction (as defined below) closes. It is expected that Cologix will continue operation of these facilities and the associated data centre businesses, or alternatively, Brookfield will do so where the Cologix Transaction fails to close. The interplay and potential outcomes related to the timing of the closing of the two transactions is discussed below.

61. As discussed below, the Debtor's gave notice to the affected Communications ULC counterparties (including landlords Polaris Realty (Canada) Limited ("**Polaris**") and Tidan, Inc.) with contracts to be assumed pursuant to the Cologix Transaction.

## BROOKFIELD TRANSACTION

Sales Process

62. As described more fully in the First Koza Affidavit, in March 2023, the Debtors, with the assistance of their advisors, launched the Prepetition Marketing Process (together with the postpetition Bidding Procedures, the "**Marketing Process**") to engage interested third parties in a potential sale transaction. The Bidding Procedures were described more fully in the First Report and there have been subsequent updates in each of the Previous Information Officer Reports.

63. The Debtors have advised that on November 1, 2023, following months of arm's-length, good faith negotiations with multiple parties, the Marketing Process concluded, and the Debtors determined that the proposed Brookfield Transaction

was the highest or otherwise best offer available for substantially all of the Debtors' assets.

64. The Debtors have advised that the Required Consenting Term Lenders and the UCC all support the proposed Brookfield Transaction and believe that the proposed Brookfield Transaction is in the best interests of the Debtors and their estates, as it serves to maximize the value of the Acquired Brookfield Assets.

Proposed Brookfield Transaction

65. The Confirmation Order granted following the Confirmation Hearing approved the Brookfield Transaction.

66. The Li Affidavit describes the Brookfield APA in detail. Certain key aspects of the Brookfield APA have been summarized below:

a) Brookfield will purchase the Acquired Brookfield Assets, subject to the assumption of certain liabilities (the "**Assumed Brookfield Liabilities**"), but free and clear of all claims, liens, rights, interests, and encumbrances other than Permitted Encumbrances (as defined in the Brookfield APA), in exchange for (i) the assumption of certain liabilities described in the Brookfield APA, (the "**Assumed Brookfield Liabilities**") and (ii) a cash payment of $775,000,000 subject to adjustments described therein.

b) all contracts and leases will be rejected or assumed, as discussed below;

c) The Assumed Brookfield Liabilities include all Liabilities (as defined in the Brookfield APA) relating to employees of the Debtors who accept Brookfield's offer of employment (the "**Transferred Brookfield Employees**") and to employees of the Debtors who do not become Transferred Brookfield Employees as a result of a breach of Brookfield's obligations to offer employment in section 6.3 of the Brookfield APA. The Liabilities (as defined in the Brookfield APA) relating to employment arising before closing are Excluded Liabilities

(as defined in the Brookfield APA) to the extent that such employees do not accept employment and are not considered Transferred Brookfield Employees; and

d) it is a condition of the Brookfield APA that the Canadian Court recognize the Confirmation Order and grant a vesting order for the benefit of Brookfield in the Acquired Brookfield Assets. Furthermore, it a condition of the Joint Plan that the Brookfield Transaction close.

67. The Debtors' U.S. counsel advised that KCC served notice of filing of the Plan Supplement on the affected Canadian parties as well as a cure notice for each counterparty on the Schedule of Assumed Executory Contracts and Unexpired Leases. As discussed, a copy of the Plan Supplement is attached hereto as **Appendix "D"**.

68. Pursuant to the Brookfield APA, the Purchaser is required to make employment offers to all of the Debtors' Canadian employees on substantially the same or better terms than current employment contracts with Cyxtera.

69. The Confirmation Order of the U.S. Bankruptcy Court for which the Foreign Representative is seeking recognition of in Canada (the "**Confirmation Recognition Order**"), includes that the Chief Restructuring Officer ("**CRO**") or Deputy Chief Restructuring Officer ("**DCRO**") of Communications ULC will file with the Canadian Court and serve on the service list maintained by the Foreign Representative and Canadian Debtors, a certificate confirming the Brookfield Transaction has closed.

## CANADA SALE ORDER & COLOGIX RECOGNITION ORDER

Sale Process

70. The Debtors have advised that since mid-2020, CTI has been engaged in on-and-off negotiations with Cologix regarding the terms of a sale transaction of certain of the Company's assets in Canada.

71. In August 2022, CTI reengaged Cologix regarding a possible sale and purchase of certain of the Acquired Assets, including the YVR Facility lease. As negotiations progressed into the spring of 2023, Cologix also expressed interest in acquiring Communications ULC's obligations under the YUL Facility lease. The Debtors have advised that over the next several months, CTI and Cologix continued these discussions and negotiated the terms of the proposed Cologix Transaction (as defined below) at arm's length and in good faith.

72. As described previously, in March 2023, the Debtors, with the assistance of their advisors, launched the Prepetition Marketing Process (together with the postpetition Bidding Procedures) to engage interested third parties in a potential sale transaction.

Proposed Cologix Transaction

73. On November 3, 2023, the Debtors provided notice that Communications ULC reached an agreement on the terms of an asset sale with Cologix Canada, Inc. ("**Cologix**"). Pursuant to the terms of the proposed asset sale (the "**Cologix Transaction**"), Cologix will, among other things, purchase certain of Communications ULC's assets (the "**Acquired Cologix Assets**"), subject to certain adjustments. A copy of the asset purchase agreement by and between Communications ULC and Cologix (the "**Cologix APA**") is attached hereto as **Appendix "E"**.

74. The Li Affidavit describes the Cologix APA in detail. Certain key aspects of the Cologix APA have been summarized below:

    a) Cologix will purchase the Acquired Cologix Assets, subject to the assumption of certain liabilities (the "**Assumed Cologix Liabilities**") and permitted encumbrances, but free and clear of all claims, liens, rights, interests, and encumbrances, in exchange for (i) the assumption of the Assumed Cologix Liabilities and (ii) a cash payment of $10,000,000.

b) it is a condition of the Cologix APA that all contracts and leases will be assumed and assigned, as discussed below;

c) The Assumed Cologix Liabilities includes all Liabilities (as defined in the Brookfield APA) relating to employees of Communications ULC engaged in the business transferred to Cologix that that accept offers of employment with Cologix (the "**Transferred Cologix Employees**") and all Liabilities and obligations assumed by Cologix under section 6.1 of the Cologix APA. All Liabilities relating to the employment by Communications ULC of any Business Employees (as defined in the Brookfield APA) are Excluded Liabilities. However, Cologix shall be solely liable for Liabilities relating to Transferred Cologix Employees to the extent such Liability arises after such Transferred Employee commences employment with Cologix and relates to or arises from such employment, or relates to or arises from a breach of or default under an offer of employment by Cologix. There are specific legislative requirements relating to such employees of Communications ULC residing in Quebec that provide that Cologix will be responsible for all liabilities relating to those employees; and

d) it is a condition of the Cologix APA that the Canadian Court recognize the Cologix Transaction Order and grant a vesting order for the benefit of Cologix in the Acquired Cologix Assets.

75. Pursuant to the Contract Rejection/Assumption Procedures Order, on November 3, 2023, the Debtors gave notice (the "**Cologix Assumption and Assignment Notice**") to the affected parties that the Debtors have determined, in the exercise of their business judgment, that certain contracts were assumed or assumed and assigned, as applicable, effective as of the date set forth in the Cologix Assumption and Assignment Notice. The Cologix Assumption and Assignment Notice is attached hereto as **Appendix "F"**.

76. The Cologix Assumption and Assignment Notice provided notice that the Debtors evaluated the financial wherewithal of Cologix and concluded that Cologix has the financial wherewithal to meet all future obligations under the assumed and assigned contracts, which may be evidenced upon written request by the counterparty to the contracts.

77. On November 14, 2023, Cologix provided a letter to the Information Officer addressing adequate assurance of future performance, which indicated that Cologix underwent an approximate USD $3 billion equity recapitalization in 2021 and has raised approximately USD $2 billion in financing in the past 18 months. A copy of the letter is attached hereto as **Appendix "G"**.

78. The Cologix Assumption and Assignment Notice was sent to various counterparties to contracts Communications ULC, including landlords Polaris[6] and Tidan, Inc.[7], whose contracts with Communications ULC are to be assumed and assigned to Cologix.

79. The Debtors received three objections to the Cologix Assumption and Assignment Notices:

    a) Polaris objected to (a) the proposed Cure Amount on the basis that it did not include additional amounts, including legal fees which have accrued and continue to accrue; and (b) the lack of financial information necessary to assure the future performance of the proposed assignee; and

    b) two other counterparties objected on the basis that the proposed contracts have been terminated or were inadequately or inaccurately described in the Cologix Assumption and Assignment Notice.

[6] The Polaris Cure Amount is listed at USD$142,171.01.

[7] The Tidan, Inc. Cure Amount is listed at USD$36,563.75.

80. The Debtors have advised that Polaris and the Debtors are continuing to attempt to consensually resolve their objection.

81. On November 9, 2023, the Debtors gave additional notice (the "**Cologix Supplemental Assumption and Assignment Notice**") to additional affected parties that the Debtors determined, in the exercise of their business judgment, are party to certain contracts to be assumed or assumed and assigned, as applicable, effective as of the date set forth in the Cologix Supplemental Assumption and Assignment Notice. The Cologix Supplemental Assumption and Assignment Notice is attached hereto as **Appendix "H"**.

82. The Foreign Representative has advised that it is the intention of Cologix that all employees of the Debtors' business related to the Cologix Acquired Assets will receive employment offers from Cologix on substantially the same or better terms than their current employment contracts with Cyxtera.

83. On November 3, 2023, the Debtors filed notice of their motion for entry of an Order (the "**Cologix Transaction Order**") (i) authorizing Cyxtera Canada to Enter into and Perform its Obligations Under the Cologix APA, (ii) approving the Sale of Certain Canadian Assets Free and Clear of Claims, Liens, Rights, Interests, and Encumbrances and (iii) approving the Assumption and Assignment of Executory Contracts and Unexpired Leases. The application for the Cologix Transaction Order was heard at the Confirmation Hearing.

Relationship between the Proposed Brookfield Transaction and Proposed Cologix Transaction

84. The Cologix Transaction is separate from the Brookfield Transaction, and Cologix is a separate buyer for the Acquired Assets (as defined in the Cologix APA) under the Cologix APA. The Debtors have advised that it is anticipated that the Cologix Transaction will be completed prior to the Brookfield Transaction. If the Cologix Transaction is completed prior to closing of the Brookfield Transaction or within 90 days of closing of the Brookfield Transaction (the "**Specified Date**" (as defined in section 2.1(c) of the Brookfield APA)), the Cologix Transaction is expected to

increase the recovery by approximately $10 million over what would have been obtained if only the Brookfield Transaction closed, which is equal to the cash payment payable by Cologix to Communications ULC for the Acquired Assets (as defined in the Cologix APA) (including in particular the YVR Facility and YUL Facility).

85. Pursuant to the Brookfield APA, if the proposed Cologix Transaction closes prior to the Brookfield Transaction, then Cologix will acquire the Acquired Assets (as defined in the Cologix APA), including the YVR Facility and YUL Facility and associated data centres, free and clear of Encumbrances (other than Permitted Encumbrances) in exchange for the assumption of the Assumed Liabilities and a cash payment of $10,000,000. In this circumstance, the Cologix APA will be deemed an Excluded Contract under the Brookfield APA and the Acquired Assets (as defined in the Cologix APA) will be deemed Excluded Assets under the Brookfield APA.

86. If the Cologix Transaction is not completed prior to closing of the Brookfield Transaction, then one of two events will occur:

    a) if the Cologix Transaction is completed within 90 days of closing of the Brookfield Transaction (the "Specified Date" (as defined in section 2.1(c) of the Brookfield APA)), then the Cologix APA will be deemed to be an Excluded Contract (as defined in the Brookfield APA), the Acquired Assets (as defined in the Cologix APA) will be deemed to be Excluded Assets under the Brookfield APA, and Brookfield will promptly pay to the Debtors the Adjusted Specified Closing Date Payment, which equals the closing date payment of $10,000,000 (subject to any adjustment for taxes) less the aggregate amount of all costs, expenses and taxes incurred by Brookfield (including its affiliates) in connection with the transactions contemplated by the Cologix APA; or

b) if the Cologix Transaction is not completed by the Specified Date, then the the "Acquired Assets" (as defined in the Cologix APA) will be Acquired Assets (as defined in the Brookfield APA) and will be acquired by Brookfield in accordance with the Brookfield APA.

87. The Cologix Transaction Order of the U.S. Bankruptcy Court of which the Foreign Representative is seeking recognition in Canada (the "**Cologix Recognition Order**"), provides that the CRO or DCRO of Communications ULC will deliver to Brookfield and Cologix, file with the Canadian Court and serve on the service list maintained by the Foreign Representative and Canadian Debtors, a certificate confirming which of the three scenarios has occurred (the "**Closing Certificate**"). The Closing Certificate will be modified by the CRO or DCRO based on the outcome of the timing of the scenarios described above.

88. The Cologix Recognition Order vests the Acquired Cologix Assets with Cologix if the proposed Cologix Transaction closes before the proposed Brookfield Transaction closes or before the Specified Date. The Cologix Recognition Order vests the Acquired Cologix Assets with Brookfield if the Cologix Transaction does not close before the Specified Date.

89. The Debtors have advised that each of the Required Consenting Term Lenders, the UCC and Brookfield all support the proposed Cologix Transaction and they believe that the proposed Cologix Transaction is in the best interests of the Debtors and their estates, as it serves to maximize the value of the Acquired Cologix Assets.

## OTHER ORDERS OF THE U.S. BANKRUPTCY COURT

90. Copies of the Orders made by the U.S. Bankruptcy Court and other documents related to the Chapter 11 Proceedings are available on the Chapter 11 Website, a link to which is included on the Case Website.

Shortening Time

91. On November 3, 2023, the Debtors made an application to shorten the notice period of the hearing on the Cologix Transaction Order (the "**Shortening Time Order**").

92. The Debtors sought the abbreviated period so that the application for approval of the proposed Cologix Transaction could heard at the Confirmation Hearing in conjunction with approval of the proposed Brookfield Transaction, which will reduce administrative fees associated to accommodating the standard notice period. Seeking approval of the proposed Cologix Transaction pursuant to section 363 of the U.S. Bankruptcy Code was a requirement of Cologix.

93. On November 6, 2023, the U.S. Bankruptcy Court granted the Shortening Time Order.

Bid Protection Order

94. In accordance with the Bidding Procedures Order, the Debtors have designated Brookfield as the Stalking Horse Bidder.

95. Section 8.2 of the Brookfield APA provides for, among other things, the following:

a) a break up fee in an amount equal to $23,250,000 (*i.e.*, 3% of the proposed Purchase Price) (the "**Break Up Fee**"); and

b) an expense reimbursement provision for reasonable and documented out-of-pocket expenses (including fees and expenses of counsel) incurred by Brookfield in connection with the negotiation, diligence, execution, performance, and enforcement of the Brookfield APA, in an amount not to exceed $7,750,000 (the "**Expense Reimbursement**"),

(the Break Up Fee and Expense Reimbursement together, the "**Bid Protections**").

96. The Bid Protections are in consideration for Brookfield having expended considerable time and expense in connection with the Brookfield APA, the negotiation thereof, and the identification and quantification of assets of CTI (together with certain of its Debtor affiliates and subsidiaries).

97. On November 13, 2023, the U.S. Bankruptcy Court entered through a certificate of no objection, an Order Approving the Bid Protections (the "**Bid Protections**

**Order**"). The Foreign Representative and Canadian Debtors seek recognition of the Bid Protections Order in Canada.

Contract Rejection/Assumption Procedures Order

98. On June 29, 2023, the U.S. Bankruptcy Court entered through a certificate of no objection the Contract Rejection/Assumption Procedures Order. The Cyxtera Group did not initially seek recognition of the Contract Rejection/Assumption Order in Canada because there was no intention to reject any executory contracts or unexpired leases in Canada.

99. To facilitate and effectuate the Canada Transaction, the Cologix Transaction Order authorizes Communications ULC to assume the assigned Cologix contracts and assign them to Cologix in accordance with the terms of the Cologix APA. Pursuant to the Cologix Transaction Order, all such assumptions and assignments will be done in accordance with the Contract Rejection/Assumption Procedures Order.

100. Therefore, the Cyxtera Group is now seeking recognition of the Contract Rejection/Assumption Procedures Order in Canada.

Sixth Interim Cash Management Order

101. Since the date of the Fourth Report, the U.S. Bankruptcy Court made, among others, the sixth interim Cash Management Order for which recognition is sought in the Canadian Proceedings[8].

102. The Cash Management Order, among other things, authorizes the Debtors to continue to use their Cash Management System and continue to perform Intercompany Transactions (as described in the Pre-Filing Report). Post-petition date transfers and payments from one Debtor to another Debtor under any Intercompany Transactions authorized under the Cash Management Order are accorded super-priority administrative expense status.

[8] Additional information regarding the Cash Management Order can be found in the Koza Affidavits.

103. As previously discussed in the Prior Information Officer Reports, the Information Officer had been advised that the Debtors intended to continue to extend the Cash Management Order on an interim basis, as Communications ULC had bank accounts in Canada that were not fully insured by a government backed insurance program, in particular the U.S. Federal Deposit Insurance Corporation, and the U.S. Trustee could not approve, on a final basis, bank accounts that were not fully insured by a government backed insurance program.

104. On September 21, 2023, the U.S. Bankruptcy Court entered through a certificate of no objection, the fifth interim Cash Management Order, which granted the Debtors a limited waiver of the Debtors' compliance with the deposit and investment guidelines set forth in the U.S. Bankruptcy Code and the U.S. Trustee guidelines. On October 11, 2023, the Foreign Representative obtained an order from the Canadian Court recognizing and giving effect in Canada to the fifth interim Cash Management Order.

105. The Information Officer has been advised by the Foreign Representative that the banking arrangements Communications ULC was attempting to set up with its Bank of America branch in the United States, could not be finalized in time before the expiry of the period under the fifth interim Cash Management Order prior to the Debtors obtaining a final cash management Order. Accordingly, the Debtors sought the sixth interim Cash Management Order as a stopgap measure. No objections were filed in relation to the sixth interim Cash Management Order motion prior to the objection deadline. The sixth interim order is substantially the same as the fifth interim order.

106. On October 25, 2023, the U.S. Bankruptcy Court entered through a certificate of no objection, the sixth interim Cash Management Order. The Foreign Representative and Canadian Debtors seek recognition of the sixth interim Cash Management Order in Canada.

Retention of AP Services Order

107. On July 19, 2023, the U.S. Bankruptcy Court entered through a certificate of no

objection an Order Authorizing the (i) Retention of AP Services, LLC, (ii) Designation of Eric Koza as CRO and Raymond Li as DCRO Effective as of the Petition Date (the "**Retention of AP Services Order**").

108. The Foreign Representative and Canadian Debtors are seeking recognition of the Retention of AP Services Order of the U.S. Bankruptcy Court as it provided the CRO and DCRO of the Canadian Debtors, being members of AP Services, LLC, an affiliate of AlixPartners, LLP, authority to act in those positions for Cyxtera.

## ACTIVITIES OF THE INFORMATION OFFICER

109. The activities of the Information Officer since the date of the Fourth Report (October 6, 2023) until the date of this Report have included:

a) reviewing relevant materials filed in the Chapter 11 Proceedings and drafts of the application materials for the CCAA Recognition Proceedings;

b) reviewing, analyzing, and considering the financial and other information received by the Information Officer;

c) maintaining the Case Website for the CCAA Recognition Proceedings to make available copies of the orders granted in the Restructuring Proceedings and other relevant motion materials and reports;

d) monitoring the Chapter 11 Website for activity in the Chapter 11 Proceedings;

e) reviewing and considering the orders made in the Chapter 11 Proceedings;

f) communicating with United States and Canadian counsel to CTI and the Cyxtera's financial advisor regarding matters relevant to the Restructuring Proceedings;

g) attending the hearing before the Canadian Court on October 11, 2023; and

h) preparing this Fifth Report.

## APPROVAL OF PROFESSIONAL FEES AND EXPENSES

110. The Foreign Representative previously obtained orders from the Canadian Court approving the accounts of the Foreign Representatives and Debtors' legal counsel, Gowling, the Information Officer and the Information Officer's independent legal counsel (the "**Canadian Professionals**") for the consolidated period between May 23, 2023 to September 30, 2023 as outlined previously in Prior Information Officer Reports.

111. CTI, Cyxtera Canada and Cyxtera LLC now seek approval from the Canadian Court of the Canadian Professionals fees and costs for the following amounts and time periods:

a) Professional fees and costs rendered by the Information Officer, from October 1, 2023 to October 31, 2023, total CAD$22,134.50 (exclusive of GST);

b) Professional fees and costs rendered by McMillan, the Information Officer's counsel, from October 1, 2023 to October 31, 2023, total CAD$11,379.25 (exclusive of GST); and

c) Professional fees and costs rendered by Gowling, CTI's and the Debtors' Canadian counsel, from October 1, 2023 to November 14, 2023, total CAD$465,170.83 (inclusive of GST).

112. The accounts of the Canadian Professionals outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. Copies of the invoices of the Information Officer and McMillan will be made available to the Court and any interested party, if requested, at or before the Debtor's application set for November 21, 2023. Gowling's account is found in the Li Affidavit.

113. The Information Officer respectfully submits that its professional fees and costs and those of its legal counsel and Gowling are fair and reasonable in the circumstances, given the tasks required to be performed by the Canadian Professionals within the Restructuring Proceedings.

**RECOMMENDATIONS**

114. The Information Officer understands that recognition by the Canadian Court of the requested orders is necessary for the conduct of the Restructuring Proceedings, and that absent such recognition and relief, the restructuring efforts of the Debtors could be impaired.

115. The Information Officer has reviewed the Confirmation Order, the Cologix Transaction Order, the Shortening Time Order, the Bid Protections Order, Contract Rejection/Assumption Procedures Order, the sixth interim Cash Management Order and Retention of AP Services Order.

116. CTI has advised that recognition of these Orders is required for the protection of Debtors' property or protection of the interests of its creditors and/or are required in order for the Debtors to continue to operate in the ordinary course of their business and complete their restructuring efforts in the Chapter 11 Proceedings. Specifically, it is a condition in both the Brookfield APA and Cologix APA that a recognition and vesting order from the Canadian Court be granted for the Brookfield Transaction and Cologix Transaction to close.

117. CTI has advised that all objections filed by Canadian stakeholders in the Chapter 11 Proceedings have been resolved and that these Orders treats Canadian creditors the same as creditors of the other Chapter 11 Debtors. Accordingly, the Information Officer is of the view that granting recognition of this order is reasonable and appropriate in the circumstances.

118. To conclude:

a) the Joint Plan was voted in favor unanimously by the First Lien Lenders

and DIP Lenders;

b) the Joint Plan was voted in favor by the general unsecured creditors (95% in number and 85% in value);

c) the Canadian Debtors' operations are closely integrated with those of the other Debtors. Implementing the Joint Plan, which includes the Brookfield APA is essential for the Debtors, including the Canadian Debtors, to conclude the Chapter 11 Proceedings; and

d) the Confirmation Order is necessary to ensure the fair and efficient administration of this cross-border insolvency. It is in the interest of all stakeholders that there be a coordinated cross-border approach to ensure that the Debtors can conclude the Chapter 11 Proceedings with continued operations (under the auspices of Brookfield).

119. Based on the foregoing, the Information Officer respectfully recommends that the Canadian Court grant the relief requested by the Foreign Representative.

All of which is respectfully submitted this 17th day of November, 2023.

**ALVAREZ & MARSAL CANADA INC.,**
**in its capacity as the Information Officer of**
**Cyxtera Canada and not its personal or corporate capacity**

Orest Konowalchuk, CPA, CA, CIRP, LIT
Senior Vice President

## Appendix "A"

| |
|---|
| CYXTERA TECHNOLOGIES, INC. [1] |
| CYXTERA CANADA, LLC |
| CYXTERA CANADA TRS, ULC |
| CYXTERA COMMUNICATIONS CANADA, ULC |
| CYXTERA COMMUNICATIONS, LLC |
| CYXTERA DATA CENTERS, INC. |
| CYXTERA DC HOLDINGS, INC. |
| CYXTERA DC PARENT HOLDINGS, INC. |
| CYXTERA DIGITAL SERVICES, LLC |
| CYXTERA EMPLOYER SERVICES, LLC |
| CYXTERA FEDERAL GROUP, INC. |
| CYXTERA HOLDINGS, LLC |
| CYXTERA MANAGEMENT, INC. |
| CYXTERA NETHERLANDS B.V. |
| CYXTERA TECHNOLOGIES, LLC |
| CYXTERA TECHNOLOGIES MARYLAND, INC. |

[1] A complete list of each of the Debtors in the Chapter 11 Proceedings may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/cyxtera.

**Appendix “B”**

**Exhibit A**

**Asset Purchase Agreement**

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**ASSET PURCHASE AGREEMENT**

**DATED AS OF OCTOBER 31, 2023**

**BY AND AMONG**

**PHOENIX DATA CENTER HOLDINGS LLC, AS PURCHASER,**

**AND**

**CYXTERA TECHNOLOGIES, INC.**

**AND ITS SUBSIDIARIES NAMED HEREIN, AS SELLERS**

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*This is a draft agreement only, and delivery or discussion of this draft agreement is not, and will not be deemed or construed to be, an offer or commitment with respect to the proposed transaction to which this draft agreement relates. Notwithstanding the delivery of this draft agreement or any other past, present or future written or oral indications of assent, or indications of the result of negotiations or agreements, no party to the proposed transaction (and no person or entity related to any such party) will be under any legal obligation whatsoever with respect to the proposed transaction unless and until the definitive agreement providing for such transaction has been executed and delivered by all parties thereto.*

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**INDEX OF EXHIBITS**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this "Agreement"), dated as of October 31, 2023, is made by and among Phoenix Data Center Holdings LLC, a Delaware limited liability company ("Purchaser"), Cyxtera Technologies, Inc., a Delaware corporation (as in existence on the date hereof, as a debtor-in-possession and a reorganized debtor, as applicable, "CTI") and the Subsidiaries of CTI that are indicated on the signature pages attached hereto and, after the date hereof, each Person who executes and delivers a Seller Joinder pursuant to Section 6.16 (together with CTI, each a "Seller" and collectively, the "Sellers"). Purchaser and Sellers are referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used herein shall have the meanings set forth herein, including Article XI, or the Plan (as defined herein).

WHEREAS, on June 4, 2023 (the "Petition Date"), Seller, together with certain of Seller's Affiliates (the "Debtors"), commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court"), which cases are jointly administered for procedural purposes under *In re Cyxtera Technologies, Inc.*, Case No. 23-14853 (JKS) (Bankr. D.N.J. June 4, 2023) (collectively, the "Bankruptcy Cases");

WHEREAS, on June 6, 2023, the Foreign Representative and Canadian Sellers obtained an Initial Recognition Order (Foreign Main Proceeding) and Supplemental Order (Foreign Main Proceeding) from the CCAA Court (the "CCAA Proceeding") and thereafter have obtained further recognition Orders from CCAA Court recognizing Orders made by the Bankruptcy Court granted in the Bankruptcy Cases; and

WHEREAS, pursuant to the Bidding Procedures Order, the Plan, and upon the terms and conditions set forth in this Agreement and entry of the Confirmation Order, and as authorized under sections 105, 363, 365, 1123, 1129, 1141 and 1142 of the Bankruptcy Code, Purchaser (or a Designee) desires to purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desire to sell, convey, assign, and transfer to Purchaser (or a Designee) the Acquired Assets together with the Assumed Liabilities

WHEREAS, Purchaser (or a Designee) desires to purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desire to sell, convey, assign, and transfer to Purchaser (or a Designee) the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363, 365, 1123, 1129, 1141, and 1142 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and the Plan and subject to entry of the Confirmation Order and consummation of the Plan; and

WHEREAS, as of the date hereof, in connection with the Transactions, Sellers entered into certain lease amendments or surrender agreements in respect of those certain leases between Sellers or their Affiliates, as tenant, on the one hand, and Affiliates of Digital Realty Trust Inc., as landlord, on the other hand, at the following locations: (i) 365 S. Randolphville Road, Piscataway, New Jersey; (ii) 200 N. Nash Street, El Segundo, California; (iii) 3015 Winona Avenue, Burbank, California; (iv) Hanauer Landstrasse 298, 60314 Frankfurt am Main, Germany (FRA1); (v)

Wilhelm-Fay-Strasse 24, Sossenheim, 65936 Frankfurt am Main, Germany (FRA2); and (vi) premises on the 7th floor of 29A International Business Park, Jurong East, Singapore (SIN2-C).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants, and agreements set forth herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

## ARTICLE I
## PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363, 365, 1123, 1129, 1141, and 1142 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Confirmation Order and the Plan, at the Closing, Sellers shall sell, transfer, assign, convey, and deliver to Purchaser or one or more Designees, and Purchaser or such Designee(s) shall purchase, acquire, and accept from Sellers all of Sellers' right, title and interest in, to and under, the Acquired Assets (which sale shall, if Purchaser delivers a DLR Election Notice in accordance with Section 2.3(b), be effected in connection with the consummation of the DLR Transactions in accordance with, and subject to the terms and conditions of, Section 6.18), free and clear of all Encumbrances other than Permitted Post-Closing Encumbrances. "Acquired Assets" means all of the properties, rights, interests and other assets of each Seller as of the Closing, whether tangible or intangible, real, personal, or mixed, wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP, including any such properties, rights, interests, and other assets acquired by any Seller after the date hereof (in accordance with this Agreement) and prior to the Closing, and including Sellers' right, title and interest in and to, as of the Closing, the following assets of each Seller, but excluding in all cases the Excluded Assets:

(a) (i) the Specified Agreement (solely to the extent the transactions contemplated thereunder have not been consummated prior to the Closing), and (ii) the Acquired Leases and (iii) the other Contracts listed on Schedule 1.1(a), in each case, subject to Section 1.5 (the "Assigned Contracts");

(b) all accounts receivable, notes receivable, payment intangibles, negotiable instruments, chattel paper and other amounts receivable owed to the Sellers or their Subsidiaries (whether current or non-current), together with all security or collateral therefor and any unpaid interest, fees or financing charges accrued thereon or other amounts due with respect thereto, including all Actions pertaining to the collection of amounts payable, or that may become payable, to the Sellers or their Subsidiaries with respect to products sold or services performed on or prior to the Closing Date, other than any of the foregoing to the extent owed by any Seller to any other Seller (other than any Seller that is an Acquired Entity), which shall be Excluded Assets;

(c) all bank accounts, prepaid assets, and all prepaid or deferred charges and expenses and all other current assets, all assets (including, to the extent applicable, all Tax pre-payments, refunds, credits, and other assets) that are within the trial balance categories used in determining, or otherwise would have been taken into account in, Closing Working Capital, and

all lease and rental payments that have been prepaid by any Seller with respect to any Acquired Leased Real Property;

(d) all Documents, but excluding any information to the extent prohibited by Law (which shall be Excluded Assets);

(e) the Leased Real Property listed on Schedule 1.1(e), in each case, subject to Section 1.5 (the "Acquired Leased Real Property" and the Lease governing any Acquired Leased Real Property, an "Acquired Lease"), including any Leasehold Improvements and all fixtures and improvements thereon and appurtenances thereto;

(f) all Owned Real Property of Sellers;

(g) all tangible assets (including Equipment, computer systems, computer hardware, supplies furniture, fixtures, machinery and fixed assets) of Sellers, including the tangible assets of Sellers located at any Acquired Leased Real Property or Owned Real Property and any such tangible assets on order to be delivered to any Seller; provided that, with respect to any such tangible asset that is leased to any Seller, the underlying lease agreement covering such leased tangible asset is an Assigned Contract;

(h) all rights against third parties (including customers, suppliers, vendors, merchants, manufacturers and counterparties to Leases, licenses or any Assigned Contract), including causes of action, claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds (other than Tax refunds that are Excluded Assets), causes of action, rights of set off, rights of recovery, rights of recoupment or rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities made by such third parties, with respect to any of the Acquired Assets or Assumed Liabilities (in each case, other than against any Seller or its Subsidiaries that are not Acquired Entities (which shall be Excluded Assets));

(i) all shares of capital stock or other Equity Interests that any Seller owns in the Persons set forth on Schedule 1.1(i) (the "Transferred Subsidiaries" and, together with the Subsidiaries of any Transferred Subsidiary, the "Acquired Entities"), including any securities convertible into, or exchangeable or exercisable for, any such shares of capital stock or other Equity Interests, investments or contributions in the Transferred Subsidiaries (collectively, the "Acquired Interests");

(j) all assets, including receivables, due from an Acquired Entity as of the Closing;

(k) all of the rights, interests and benefits (if any) accruing under all Permits and Governmental Authorizations, and all pending applications therefor;

(l) all current and prior insurance policies of any Seller (excluding all director and officer insurance policies, which shall be Excluded Assets), and all rights and benefits of any nature of Sellers of any nature with respect thereto, including all insurance recoveries and receivables (to the extent relating to any Assumed Liability) thereunder and rights to assert claims

with respect to any such insurance recoveries and receivables (to the extent relating to any Assumed Liability);

(m) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with any Transferred Employee or any current or former employee of Sellers, current or former directors, consultants, independent contractors and agents of Sellers or their Subsidiaries or any of their Affiliates or with third parties;

(n) the sponsorship of each Employee Benefit Plan set forth on Schedule 3.16(a) (other than the Employee Benefit Plans set forth on Schedule 1.1(n)) (each, an "Acquired Seller Plan") and all right, title and interest in any assets (including all Contracts, properties and accounts) or trusts thereof or relating thereto, including any in-process insurance receivables under Acquired Seller Plans;

(o) all Intellectual Property owned by the Sellers, including the Intellectual Property set forth on Schedule 3.11(a), and all data collected by or on behalf of the Sellers and relating to customers and customer Contracts, all rights to collect royalties and proceeds in connection with such Intellectual Property, all rights to sue and recover for past, present and future infringements, dilutions, misappropriations or other violations of, or other conflicts with, such Intellectual Property and any and all corresponding rights that, now or hereafter, may be secured throughout the world (collectively, the "Acquired Intellectual Property") (regardless of whether or not such claims and causes of action have been asserted by Sellers), and all other rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, in each case. with respect to any of the foregoing and possessed by Sellers as of Closing (regardless of whether such rights are currently exercisable), and rights to protection of interests in the foregoing under the Laws of all jurisdictions, including all registrations, renewals, extensions, combinations, divisions, or reissues of, and applications for, any of the rights referred to above;

(p) all inventory, supplies and materials of Sellers as of the Closing (including all rights of Sellers to receive such inventory, supplies, materials and spare parts that are on order), and all open purchase orders with suppliers;

(q) all goodwill, payment intangibles and general intangible assets and rights of Sellers, including all goodwill associated with the Intellectual Property of Sellers and all rights under any confidentiality agreements executed by any third party for the benefit of Sellers or their Subsidiaries;

(r) (i) all rights of Sellers to cash collateral held as security for any of the Assumed Liabilities and (ii) security and other deposits (including maintenance deposits, and security deposits for rent, electricity, telephone or otherwise) held by any Seller or third-party as security for any of the Assumed Liabilities (collectively, the "Acquired Cash Collateral");

(s) only in the event that the transactions contemplated by the Specified Agreement are not consummated in accordance therewith prior to the Closing, the "Acquired Assets" (as defined in and only to the extent defined in the Specified Agreement); and

(t) all other assets that are owned or leased by any Seller as of the Closing that are not Excluded Assets.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Sellers be deemed to sell, transfer, assign, convey or deliver, and Sellers shall retain all right, title and interest in, to and under the following properties, rights, interests and other assets of Sellers (collectively, the "Excluded Assets"):

(a) other than the Acquired Cash Collateral, all Cash and Cash Equivalents, the bank account(s) set forth on Schedule 1.2(a), and any retainers or similar amounts paid to Advisors or other professional service providers, in each case not included in the Acquired Assets pursuant to Section 1.1(c);

(b) (i) all Contracts set forth on Schedule 1.2(b), (ii) all Contracts designated for rejection in accordance with Section 1.5, (iii) the Excluded Data Center Contracts, (iv) any other Contracts that (A) have not been disclosed on Schedule 1.5(a) and (B) relate exclusively to Excluded Assets or Excluded Liabilities, and (v) the Specified Agreement (solely to the extent the transactions contemplated thereunder have been consummated prior to the Closing) (the "Excluded Contracts");

(c) all Documents (including information stored on the computer systems, data networks or servers of any Seller) (i) to the extent they primarily relate to any of the Excluded Assets or Excluded Liabilities, (ii) that are Sellers' minute books, Organizational Documents, stock certificates or other Equity Interests instrument, stock registers and such other similar books and records of any Seller pertaining to the ownership, organization or existence of such Seller, corporate seal, checkbooks, and canceled checks, in each case not including any Acquired Entity, (iii) that any Seller is required by Law to retain, (iv) subject to Section 9.3, Tax Returns (and any related work papers) of any Seller, or (v) that are governed under Privacy Laws that prohibit the transfer or sale of Personal Information; provided that Purchaser shall have the right to make copies of any portions of such Documents referenced in clauses (i) through (v) to the extent not prohibited by applicable Law;

(d) all documents prepared or received by any Seller or any of its Affiliates or on their behalf in connection with the sale of the Acquired Assets, this Agreement or the other Transaction Agreements, the Transactions, or the Bankruptcy Cases (excluding confidentiality agreements with prospective purchasers of the Acquired Assets or the Assumed Liabilities or any portion thereof), including (i) all records and reports prepared or received by Sellers or any of their respective Affiliates or Advisors in connection with the sale of the Acquired Assets and the Transactions, including all analyses relating to the business of Purchaser or its Affiliates so prepared or received and (ii) all bids and expressions of interest received from third parties with respect to the acquisition of any of Sellers' businesses or assets;

(e) all director and officer insurance policies, and all rights and benefits of any nature of Sellers with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(f) all Equity Interests of any Seller or any of their respective Subsidiaries, in all cases, other than any of the foregoing issued by any Acquired Entity;

(g) (i) all Avoidance Actions, and (ii) all claims that any Seller or any of its Affiliates may have against any Person to the extent related to any Excluded Assets or any Excluded Liabilities;

(h) Sellers' claims, causes of action or other rights under this Agreement, including the Purchase Price hereunder, or any agreement, certificate, instrument, or other document executed and delivered between any Seller or its Affiliates and Purchaser in connection with the Transactions, or any other agreement between any Seller or its Affiliates and Purchaser entered into on or after the date hereof in accordance with this Agreement;

(i) all Tax refunds, Tax attributes and Tax assets, in each case, of Sellers, other than (i) any such Tax attributes or assets that transfer by operation of Law by virtue of the acquisition of the Acquired Assets and (ii) any such Tax refunds, attributes or assets that are Acquired Assets;

(j) the sponsorship of each Employee Benefit Plan that is not an Acquired Seller Plan, and all rights, title and interest in any assets (including Contracts, properties and accounts) or trusts thereof or relating thereto;

(k) in-process insurance receivables to the extent not relating to any of the Acquired Assets under Section 1.1(l) and Section 1.1(n);

(l) only in the event that the transactions contemplated by the Specified Agreement are consummated in accordance therewith prior to the Closing, the "Acquired Assets" (as defined in and only to the extent defined in the Specified Agreement); and

(m) all receivables in respect of the Excluded Liabilities consisting of intercompany Liabilities between or among any Seller(s), on the one hand, and any other Seller(s) (other than an Acquired Entity), on the other hand.

Notwithstanding the foregoing or anything to the contrary herein, all current assets of Sellers and their Subsidiaries included in the final Closing Working Capital calculation will not be Excluded Assets hereunder.

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein, and in the Confirmation Order and Plan, effective as of the Closing, in addition to the payment of the Cash Payment in accordance with Section 2.1, subject to the terms and conditions set forth in Section 6.18 (as applicable), Purchaser or one or more Designees shall irrevocably assume from each applicable Seller (and from and after the Closing pay, perform, discharge, or otherwise satisfy if, as and when required by their respective terms), and Sellers shall irrevocably transfer, assign, convey, and deliver to Purchaser or one or more Designees, the following (and only the following) Liabilities, without duplication and only to the extent not paid prior to the Closing (collectively, the "Assumed Liabilities"):

(a) (i) all Liabilities and obligations of any Seller under the Assigned Contracts, solely to the extent first arising from and after the Closing, and (ii) all Liabilities (other than Liabilities arising prior to the Petition Date including any Claims under Section 502(g) of the Bankruptcy Code) under open purchase orders with suppliers to the extent such purchase orders are Acquired Assets but excluding, in the case of clauses (i) and (ii), for the avoidance of doubt, any Cure Costs;

(b) all Liabilities included in the definition of, but not limited to the amount included in any calculation of, Working Capital;

(c) all Liabilities (including all government charges or fees) to the extent first arising out of the conduct of the business or the ownership or operation of the Acquired Assets (and not relating to or arising out of the pre-Closing period), in each case, by Purchaser from and after the Closing Date, and all Taxes arising with respect to the Acquired Assets for any taxable period (or portion thereof) beginning after the Closing Date; provided that, for the avoidance of doubt, in the case of Taxes arising in any Straddle Period, unless otherwise included as an Assumed Liability in Section 1.3(a) or Section 1.3(b), only Taxes arising in the post-Closing portion of any Straddle Period shall be Assumed Liabilities;

(d) all Liabilities to the extent related to, resulting from or arising out of any customer deposits that constitute an Acquired Asset;

(e) the sponsorship of and all Liabilities at any time arising under, pursuant to or in connection with the Acquired Seller Plans;

(f) all Taxes imposed by a Taxing Authority in the United Kingdom, Germany or Singapore (including any such Taxes imposed in the United Kingdom, Germany or Singapore that are income Taxes, withholding Taxes, or Transfer Taxes), in each case, that are required to be paid by Sellers as a result of the DLR Transactions (if applicable), including with respect to repatriating or otherwise delivering any cash received in connection with such transactions to the Sellers;

(g) all Liabilities agreed in writing to be assumed by Purchaser or for which Purchaser has agreed in writing to be responsible in accordance with, or pursuant to the terms and conditions of, this Agreement;

(h) (i) all Liabilities relating to (x) Transferred Employees and (y) any Business Employees who do not become Transferred Employees in accordance with Section 6.3(e) as a result of Purchaser breaching its obligations under Section 6.3; and (ii) all Liabilities and obligations otherwise expressly assumed by Purchaser under Section 6.3; and

(i) All Liabilities set forth on Schedule 1.3(i).

Notwithstanding the foregoing and for the avoidance of doubt, Assumed Liabilities shall not include any Liability (1) relating to or arising out of any violation of Law by, or any Action against, any Seller or any breach, default or violation by any Seller or any of its Affiliates of or under any Assigned Contracts, or (2) that is, or is contemplated to be, discharged or released under the Plan, all of which shall constitute Excluded Liabilities.

1.4 Excluded Liabilities. Purchaser and its Designee(s) shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, any Seller of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Closing, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities"). Without limiting the foregoing, Purchaser and its Designee(s) shall not be obligated to assume, and do not assume, and hereby disclaim all the Excluded Liabilities, including the following Liabilities of any of the Sellers or of any predecessor of any of the Sellers:

(a) all cure costs required to be paid pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts as finally determined by the Bankruptcy Court (the "Cure Costs");

(b) all Liabilities arising under or relating to any Employee Benefit Plan that is not an Acquired Seller Plan (including all assets, trusts, insurance policies and administration service contracts related thereto), and all Liabilities otherwise expressly deemed to be Excluded Liabilities under Section 6.3;

(c) except as expressly assumed under Section 1.3(a), Section 1.3(b), Section 1.3(c), Section 1.3(f), or Section 1.3(g), all Taxes of Sellers, or of or relating to the Excluded Assets, for any Tax period, and all Taxes of or relating to the Acquired Assets or Assumed Liabilities for any Tax period ending on or prior to the Closing Date, and for the pre-Closing portion of any Straddle Period, including all Taxes for which Sellers are responsible under Section 9.4(a); provided that, for the avoidance of doubt, any Taxes of an Acquired Entity for any Tax period shall not constitute an Excluded Liability;

(d) all Liabilities to the extent relating to Excluded Assets, including all Liabilities arising under executory Contracts that are not Assigned Contracts, and all intercompany Liabilities between or among any Seller(s), on the one hand, and any other Seller(s) (other than an Acquired Entity), on the other hand;

(e) all Liabilities arising from or related to any claim, Action, arbitration, audit, hearing, investigation, suit, litigation or other proceeding (whether civil, criminal, administrative, investigative, or informal and whether pending or threatened or having any other status) against any Seller or any Subsidiary thereof or any of their respective Affiliates, or related to the Acquired Assets or the Assumed Liabilities, pending or threatened or with respect to facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing Date;

(f) all Liabilities to any equityholder of any Seller or Subsidiary of a Seller (including to any equityholders who are also employees, but solely in their capacity as equityholders and not as employees);

(g) all Liabilities in respect of Indebtedness, including in respect of accrued or unpaid interest thereon and any premiums, fees, expenses or penalties (including prepayment or early termination fees) associated with the repayment thereof;

(h) all Liabilities arising out of or relating to services, products or product or service warranties of any Seller or any predecessor or Affiliate of any Seller to the extent provided, developed, designed, manufactured, sourced, produced, marketed, sold, or distributed prior to the Closing;

(i) except as expressly assumed pursuant to Section 1.3(g) and Section 1.3(h), all Liabilities of Sellers arising out of or relating to the winding down by Sellers of the business of Sellers, and any prepetition claims, rejection damages claims or other Liabilities arising in connection with the rejection of any Contracts pursuant to Section 1.5(b), other than, in each case, as contemplated by Section 1.5;

(j) all Liabilities arising under section 503(b)(9) of the Bankruptcy Code;

(k) all Liabilities for any legal, accounting, investment banking, reorganization, restructuring, brokerage or similar fees or expenses incurred, owed or subject to reimbursement by any Seller or any of the Acquired Entities or, in each case, any of their predecessors in connection with, resulting from or attributable to the Transactions or the Bankruptcy Cases or otherwise, including pursuant to the engagement letter with Guggenheim Securities; and

(l) all Liabilities for fees, costs and expenses that have been incurred or that are incurred, owed or subject to reimbursement by Sellers or any of the Acquired Entities or, in each case, any of their predecessors in connection with this Agreement or the administration of the Bankruptcy Cases and all costs and expenses incurred in connection with (i) the negotiation, execution and consummation of the Transactions and each of the other documents delivered in connection herewith and (ii) the consummation of the transactions contemplated by this Agreement, including any retention bonuses, "success" fees, change of control payments and any other payment obligations of Sellers or of any of their predecessors payable as a result of the consummation of the Transactions and the documents delivered in connection herewith other than as contemplated by Section 1.5;

provided that in the event of a conflict between the terms of Section 1.3 and this Section 1.4, the terms of Section 1.3 will control; provided, however, that the Sellers hereby agree that Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any (i) Liabilities that arose prior to the Petition Date, including any Claims under Section 502(g) of the Bankruptcy Code; and (ii) any Claims, Administrative Claims, or other Liabilities of the Debtors or the Post-Effective Date Debtors that do not constitute Acquired Assets or Assumed Liabilities; provided further, however, if an Assumed Liability is an Allowed Administrative Claim, whether such Liability arose or is deemed to have arisen prior to the Petition Date shall not determine whether such Liability is an Excluded Liability for purposes hereunder.

Notwithstanding the foregoing, Purchaser hereby acknowledges and agrees that no Liability of any Acquired Entity shall be an Excluded Liability and that all Liabilities of any Acquired Entity as of the Closing shall continue to be the Liabilities of such Acquired Entity following the Closing.

1.5 Assumption/Rejection of Certain Contracts.

(a) Schedule 1.5(a) sets forth a true, complete and correct list, as of such date of delivery, of all executory Contracts and unexpired Acquired Leases to which any Seller is a party that are available for Purchaser to potentially acquire pursuant to Section 1.1(a) and Section 1.1(e) (the "Available Contracts"), including Sellers' proposed Cure Costs associated with each such Contract and unexpired Lease set forth therein (the "Proposed Cure Costs"), which Schedule 1.5(a) may with the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed) be updated from time to time to add or remove any Contracts or Leases inadvertently included or excluded from such schedule or entered into following the date of such Schedule in accordance herewith. Upon written request by Purchaser, Sellers shall provide to Purchaser as promptly as practicable an updated Schedule 1.5(a) setting forth, to the Knowledge of Sellers, the Proposed Cure Costs as of the date of such request with respect to any Contracts or Leases identified by Purchaser in such written request.

(b) From the date hereof until the date that is ten (10) days prior to the scheduled Closing Date, Purchaser may, in its sole discretion, (i) designate any Contract, including any Intellectual Property license, and any Lease, in each case listed on Schedule 1.5(a) (other than any Excluded Data Center Contracts), for assumption and assignment to Purchaser or its Designee(s), effective on and as of the Closing, or (ii) designate any Contract (but only with the prior written consent of CTI (not to be unreasonably withheld, conditioned or delayed)) or Lease listed on Schedule 1.5(a) as an Excluded Contract for rejection effective on or as soon as reasonably practicable after the Closing (subject to Section 1.5(i)). Automatically upon any such designation by Purchaser in accordance with Section 1.5(b), any such Contract or Lease designated under Section 1.5(b)(i) shall be an Assigned Contract and any such Contract or Lease designated under Section 1.5(b)(ii) shall be an Excluded Contract for all purposes of this Agreement, and in each case with respect to an Excluded Contract, no Liabilities arising thereunder or relating thereto shall be assumed by Purchaser or be the Liability or responsibility of Purchaser, in each case, except as expressly set forth in this Section 1.5 or as Purchaser may otherwise consent to in writing (email being sufficient).

(c) The Assigned Contracts as of the date hereof that are to be assumed and assigned effective on and as of the Closing are set forth on Schedule 1.1(a) hereto, which Schedule shall (and shall be deemed to) (i) include, as of the date hereof, all Available Contracts, other than any Available Contracts set forth on Schedule 1.2(b) and the Excluded Data Center Contracts and (ii) be modified or supplemented to reflect additions or removals, as applicable, of Leases and Contracts that are (x) designated for assumption and assignment or (y) designated for rejection, in each case, as set forth in Section 1.5(b).

(d) Purchaser shall be responsible for the payment of any and all Liabilities of Purchaser, Sellers or any of their respective Affiliates under any Contracts or Leases that are designated for assumption and assignment (except for any Cure Costs, which shall be paid by Sellers in accordance with Section 5.2), in each case, that are incurred and come due and payable

during the period from and after the Closing through the effective date of such Contract's or Lease's assumption and assignment to Purchaser or its Designee in accordance with this Agreement. For the avoidance of doubt, from and after the Closing, Purchaser or its Designee shall pay all such Liabilities, and such other costs for which Purchaser is responsible under Section 1.5(i) (solely with respect to Acquired Leases), on a current basis as and when they come due and payable.

(e) Sellers shall provide timely and proper notice of the motion seeking entry of the Confirmation Order to all parties to any executory Contracts or unexpired Leases to which any Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Assigned Contracts to be assumed by the Seller and assigned to the Purchaser (or its Designee) pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code. Sellers and Purchaser shall take all actions reasonably required to assume and assign the Assigned Contracts to Purchaser or its Designee (and for Purchaser or its Designee to assume all Assumed Liabilities in connection therewith), including taking all actions reasonably necessary to facilitate any negotiations with the counterparties to such Contracts or Leases and, if necessary, to obtain an Order of the Bankruptcy Court (which may be the Confirmation Order) containing a finding that the proposed assumption and assignment of the Contracts or Leases to Purchaser or its Designee satisfies all applicable requirements of sections 365 and 1123(b)(2) of the Bankruptcy Code. In the case of any Contract or Lease of a Canadian Seller listed on Schedule 1.5(a), the Canadian Sellers and Purchaser shall cooperate in good faith to provide for treatment of each such Contract or Lease in accordance with this Agreement, and pursuant to the pending CCAA Proceeding of such Canadian Sellers to the extent permitted by or otherwise in accordance with applicable Law.

(f) From the date any Contract or Lease is designated for assumption and assignment pursuant to Section 1.5(b) and continuing until such time as it is assumed by Purchaser or its Designee as an Assigned Contract, Sellers shall not reject, terminate, amend, supplement, modify, or waive or take affirmative action to exercise any rights under such Contract or Lease, without the prior written consent of Purchaser.

(g) From and after the Closing Date until sixty (60) days following Closing, the Seller Parties and Purchaser may (but shall have no obligation to) mutually agree to seek authorization from the Bankruptcy Court pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code to assume and assign a Contract that was not identified as an Assigned Contract as of Closing.

(h) If prior to the entry of a final decree closing the Chapter 11 Cases it is discovered by any Party that a Contract or Lease that is related to the business or the Acquired Assets was excluded from Schedule 1.5(a) (any such Contract, a "Previously Omitted Contract"), the discovering Party shall, promptly following the discovery thereof (but in no event later than three (3) Business Days following the discovery thereof), notify the other Party in writing of such Previously Omitted Contract. If Purchaser wishes for the applicable Seller to assign such Previously Omitted Contract to Purchaser, Purchaser shall designate such contract as an Assigned Contract (i) within ten (10) Business Days following receipt of such notice from Seller or (ii) if such Previously Omitted Contract is identified prior to the Closing, on or before the Closing. Any such designated Previously Omitted Contract shall be deemed an Assigned Contract for all purposes under this Agreement. The Seller Parties and Purchaser shall seek authorization from the

Bankruptcy Court pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code to assume and assign any such Contract if so requested by Purchaser. If Purchaser fails to timely deliver a Designation Notice providing for the assumption and assignment of such Previously Omitted Contract, such Previously Omitted Contract shall be for all purposes under this Agreement an Excluded Contract.

(i) With respect to any Acquired Lease that Purchaser designates for rejection after the date hereof in accordance with Section 1.5(b), for a period from the Closing through and until the termination of all operations at and occupancy of all such sites:

(i) Purchaser shall be responsible for the payment of any actual and necessary costs and expenses and Liabilities of Sellers or their estates to third parties and actually incurred from and after the Closing in connection with (including any Taxes resulting solely from and that would not have been incurred but for) (A) the rejection of such Lease, (B) the winddown of all operations at, and the transfer or removal of all customers from, the site governed by such Lease, (C) all actions taken by Purchaser or its Affiliates or Advisors in connection with the foregoing; and (D) any incremental reasonable and documented out-of-pocket costs and expenses payable to Advisors or other professional service providers or otherwise by Sellers or their estates in connection with the foregoing matters; provided, that Purchaser shall only be responsible for such costs and expenses that constitute Administrative Claims that are Allowed; and provided further that Purchaser shall be entitled to all revenue or other proceeds generated from and after the Closing Date from the operations at the site governed by such Lease or the disposition of any assets (tangible or intangible) located at or related to the operations at the site governed by such Lease, it being the intent of the Parties that Purchaser bear the net economic benefit or burden of such operations from and after the Closing; provided further, however, that Purchaser shall not be responsible for the payment of any Claims arising prior to the Petition Date, including any Claims under Section 502(g) of the Bankruptcy Code, including Claims for rejection damages;

(ii) Purchaser acknowledges and agrees that Purchaser, its Affiliates, and its customers will be required to vacate the premises governed by such Lease in accordance with applicable Law and the Bankruptcy Code and any Orders of the Bankruptcy Court or CCAA Court (including the Confirmation Order with respect to (and the effectiveness of) the Plan) and Purchaser shall be responsible for any and all Liabilities related to such vacating of the premises, including related to any breach of Contract, Order, or Law arising from Purchaser or any customer failing to timely vacate (or leaving behind or abandoning any tangible assets at) such premises;

(iii) Purchaser shall, upon reasonable request, provide to Sellers any and all personnel, services, systems, and other resources as are reasonably necessary in connection with the continued operation until, and the completion of, the winddown of all operations at the site governed by such Lease, and Purchaser shall be responsible for all costs, expenses, and other Liabilities of the type and nature described in Section 1.5(i)(i) or Section 1.5(i)(ii) in connection therewith;

(iv) Sellers shall reject such Lease as requested by Purchaser in accordance with this Section 1.5 and subject to Section 1.5(i)(ii);

(v) Purchaser shall direct and control all operations at the site governed by such Lease and the winddown thereof, including personnel at such site, all communications and relations with the customers at such site and their potential relocation, until the termination of all operations at and occupancy of such site; provided that each Seller agrees to use its reasonable best efforts to reasonably cooperate with Purchaser in effectuating, and timely provide any reasonable assistance requested by Purchaser, the winddown of operations and occupancy at such site; and

(vi) Notwithstanding anything else to the contrary herein and the retention of bare legal title of any Lease by Sellers, Purchaser or a Designee shall acquire all benefits and assume all burdens of ownership with respect to the Leases (and the Parties intend that the provisions herein be interpreted consistent with this Section 1.5(i)(vi)) and the Parties agree that Purchaser or a Designee shall be treated as having acquired such Lease and any related intangible for U.S. federal (and other applicable) income Tax purposes as of the Closing.

1.6 Non-Assignment. Notwithstanding anything herein to the contrary, a Contract, Lease or insurance policy (each, a "Specified Asset") shall not be an Assigned Contract or Acquired Asset, as applicable, hereunder and shall not be assigned to, or assumed by, Purchaser or its Designee to the extent that such Specified Asset (i) is terminated by a Seller (subject to Section 6.1(b)(v)) or the counterparty thereto, or terminates or expires by and in accordance with its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract or Acquired Asset, as applicable, hereunder and is not continued or otherwise extended upon assumption, or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser or its Designee of the applicable Seller's rights under such Specified Asset, and such Consent or Governmental Authorization has not been obtained prior to the Closing. In addition, a Permit or Governmental Authorization shall not be assigned to, or assumed by, Purchaser or its Designee to the extent that such Permit or Governmental Authorization requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser or its Designee of the applicable Seller's rights under such Permit or Governmental Authorization, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Specified Asset is deemed not to be assigned pursuant to clause (ii) in the first sentence of this Section 1.6 or any Permit is deemed not to be assigned pursuant to the second sentence of this Section 1.6, the Closing shall nonetheless occur subject to the terms and conditions set forth herein and, thereafter, through the earlier of (x) such time as such Consent or Governmental Authorization is obtained and (y) twelve (12) months following the Closing (or in each case of clauses (x) and (y), the remaining term of such Contract or the closing of the Bankruptcy Case, if shorter), Sellers and Purchaser shall (A) use commercially reasonable efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser or a Designee or an Affiliate thereof any or all of any Seller's rights and obligations with respect to any such Specified Asset or Permit or Governmental Authorization, under which

(1) Purchaser or its Designee shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits under such Specified Asset or Permit or Governmental Authorization with respect to which the Consent or Governmental Authorization has not been obtained and (2) Purchaser or its Designee shall assume any related burden and obligation (including performance) with respect to such Specified Asset or Permit or Governmental Authorization, in each case, subject to the final sentence of this Section 1.6. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Specified Asset or Permit or Governmental Authorization after the Closing, Seller's right, title and interest in and to such Specified Asset or Permit or Governmental Authorization shall promptly be transferred and assigned to Purchaser or its Designee(s) in accordance with the terms of this Agreement, the Plan, the Confirmation Order, and the Bankruptcy Code. Notwithstanding anything herein to the contrary (x) the provisions of this Section 1.6 shall not apply to any Consent or approval required under the HSR Act and any Antitrust Laws, which Consent or approval shall be governed by Section 6.4 and the Bankruptcy Code. Without limitation of the foregoing, prior to the Closing, Sellers shall cooperate with Purchaser or its Designee in connection with obtaining any Consent, including by providing Purchaser or its Designee with reasonable access to and facilitating discussions with the applicable counterparties (after consultation with, and with the presence or participation of, Sellers) in respect of such Consents, and shall use commercially reasonable efforts to assist Purchaser or its Designee with obtaining such Consents as promptly as practicable after the date hereof and prior to the Closing. The Parties shall reasonably cooperate to effect any transfers or other arrangements described in this Section 1.6 in a manner that is mutually Tax efficient for the Parties and their respective Affiliates, including by treating any Seller (or applicable Affiliate thereof) initially in possession of any payment referenced in this Section 1.6 after the Closing as holding such payment as an agent or nominee for the Purchaser or its applicable Designee for income and other applicable Tax purposes to the extent permitted by applicable Law.

1.7 Designated Purchaser(s).

(a) In connection with the Closing, Purchaser shall be entitled to designate, in accordance with the terms and subject to the limitations set forth in this Section 1.7, one (1) or more of its Affiliates or, with the prior written consent of CTI (which shall not be unreasonably withheld, conditioned or delayed and which may be by email (it being agreed that it would be unreasonable for CTI not to consent to the Person (or any of its Affiliates) previously identified by Purchaser to Sellers as a possible Designee)), any other Person, in each case, to exercise Purchaser's rights or obligations to acquire any of the Acquired Assets and assume any of the Assumed Liabilities, in accordance with Sections 1.1 and 1.3 and all of the other terms of this Agreement applicable thereto (each such Person that is properly designated by Purchaser in accordance with this Section 1.7, a "Designee"); provided that no such designation would materially delay the Closing or materially and adversely affect the receipt of any regulatory approval. Prior to the Closing, Purchaser may rescind any such designation upon written notice to CTI (including via email). At and after the Closing, Purchaser shall, or shall cause its respective Designee(s) to, honor Purchaser's obligations (to the extent of the designation) at and from and after the Closing, and the Purchaser shall not be relieved of any Liability or obligation hereunder until satisfaction of such Liability or obligation by such Designee(s). Purchaser shall, promptly upon request by CTI, reimburse Sellers for their reasonable and documented out-of-pocket costs arising out of their complying with their obligations under this Section 1.7(a) and Section 6.18; provided that such reimbursable costs shall not exceed $250,000 in the aggregate without

Purchaser's prior written consent. Purchaser shall further indemnify and hold harmless the Seller Parties from and against any and all Liabilities (other than Liabilities in respect of income Taxes, except to the extent such Liabilities in respect of income Taxes constitute Assumed Liabilities under Section 1.3(f)), suffered or incurred by them solely as a result of (and which would not have arisen but for) their complying with their obligations under this Section 1.7(a) and Section 6.18, in each case, except such Liabilities suffered or incurred as a result of such Person's gross negligence, willful misconduct or willful breach of this Agreement, in each case, as determined by a final, non-appealable decision of a court of competent jurisdiction. After the Closing, any reference to Purchaser made in this Agreement in respect of any purchase, assumption or employment referred to in this Agreement shall be deemed to include reference to Purchaser's Designee(s), if any, whether or not such reference so appears. For the avoidance of doubt, by agreeing to honor Purchaser's obligations pursuant to this Section 1.7, a Designee agrees, and such Designee shall agree in writing, to be bound by all obligations applicable to Purchaser (to the extent of the designation), including those covenants contained in Article VI; provided that notwithstanding the designation of any one or more Designee(s) pursuant to this Section 1.7(a), from and after the date of any designation of a Designee and continuing after the Closing, except as required by applicable Law or to the extent necessary to effect the Transactions contemplated herein, Sellers shall be entitled to engage solely with and rely solely on any action, omission, decisions, communications, or writings of Purchaser (including on behalf of any Designee) with respect to any matters arising under and related to this Agreement or the Transactions, including the matters contemplated by Section 2.7, Article VI, Article IX, or any Agreement Dispute, including with respect to any waiver of any Closing condition or amendment to this Agreement. Notwithstanding anything to the contrary set forth herein, Sellers shall not have any Liability, including to any Designee, for any act or omission taken or not taken in reliance upon the actions taken or not taken or decisions, communications or writings made, given or executed by Purchaser on behalf of any Designee.

(b) The designation of a Designee in accordance with this Section 1.7 shall be made by Purchaser by way of a written notice to be delivered to the Sellers in no event later than five (5) Business Days prior to the Closing.

(c) For the avoidance of doubt, in the event any Designee fails to comply with any of its obligations hereunder (including with respect to any DLR Transaction and including any failure to deliver any items required to be delivered by such Designee at or prior to the Closing) or fails to comply with any Contract or obligations with Purchaser or any of its Affiliates, Purchaser shall still be required to consummate the Closing and the Transactions in accordance with the terms and subject to the conditions of this Agreement as if such Designee was not a Designee hereunder (which may include, if applicable as a result of any of the foregoing, not consummating the applicable DLR Transaction).

1.8 Certain Bank Accounts. At the Closing, Sellers shall cause Cyxtera Receivables Holdings, LLC, a Delaware limited liability company and Subsidiary of Sellers, to deliver to Purchaser all right, title and interest of Cyxtera Receivables Holdings, LLC in, to and under all

bank accounts thereof, free and clear of all Encumbrances other than Permitted Post-Closing Encumbrances.

## ARTICLE II
## CONSIDERATION; PAYMENT; CLOSING

2.1 Consideration; Payment; Estimated Adjustment Amount.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by or on behalf of Purchaser at the Closing for the purchase of the Acquired Assets shall be the sum of (i) a cash payment of $775,000,000, plus (ii) the Estimated Adjustment Amount (which may be expressed as a positive or negative number) (the result of (i) and (ii), the "Cash Payment") and (iii) the assumption of the Assumed Liabilities in accordance herewith. At least five (5) Business Days prior to the scheduled Closing Date, CTI (on behalf of the Sellers) shall deliver (or cause to be delivered) to Purchaser, a preliminary statement (the "Estimated Closing Statement") that sets forth the Sellers' good faith estimates of the (i) Cash Amount, (ii) Closing Working Capital and the resulting estimated Working Capital Overage or Working Capital Underage, if any, (iii) Factoring Facility Payoff Amount and (iv) Adjustment Amount resulting therefrom (which may be expressed as a positive or negative number) (such amount in the foregoing clause (iv), the "Estimated Adjustment Amount"), in each case, prepared in accordance with Exhibit F hereto and this Agreement, and accompanied by reasonably detailed supporting documentation for the estimates and calculations contained therein. The Cash Amount, the Closing Working Capital, the Working Capital Overage or Working Capital Underage, as applicable, the Factoring Facility Payoff Amount and the Adjustment Amount will be determined in accordance with the definitions set forth in this Agreement and will not include any changes in assets or liabilities as a result of purchase accounting adjustments. During the period after the delivery of the Estimated Closing Statement and prior to the Closing Date, Purchaser shall have an opportunity to review the Estimated Closing Statement and CTI (on behalf of the Sellers) shall provide Purchaser and its Advisors reasonable access to all properties, books and records relating thereto and the officers and other employees and advisors of the Sellers and their Affiliates, in each case, to the extent reasonably necessary to assist Purchaser and its Advisors in their review of the Estimated Closing Statement. CTI (on behalf of the Sellers) shall cooperate with Purchaser in good faith to mutually agree upon the Estimated Closing Statement in the event Purchaser disputes any item proposed to be included therein, and the Estimated Closing Statement shall be updated by CTI (on behalf of the Sellers) accordingly to reflect any such resolution prior to the Closing; provided that, to the extent that CTI (on behalf of the Sellers) and Purchaser do not agree (it being understood that neither Party shall be required to agree with the other Party) as to any one or more items by the day immediately preceding the Closing Date, then with respect to each such item the amount of such item set forth in the initial Estimated Closing Statement sent by CTI (on behalf of the Sellers) will be used for purposes of calculating the Cash Payment for the Closing.

(b) At the Closing, Purchaser (or its Designee) shall deliver, or cause to be delivered, to Sellers an aggregate amount equal to the Cash Payment less the Deposit (the "Closing Date Payment"); provided that, in the event that a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b), the Closing Date Payment for all purposes of this Agreement shall be reduced by the sum of (i) the DLR Closing Proceeds that are actually delivered, or caused to be delivered, in cash by the UK Seller, the Germany Seller, or the Singapore Seller (as

applicable) to the other Sellers prior to or at the Closing pursuant to Section 6.20 and (ii) the US Intangibles Consideration Payment. Subject to Section 6.20, the Closing Date Payment and any cash payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Person to (or for the benefit of) whom such payment is to be made, with such designation to be made at least two (2) Business Days prior to the date such payment is to be made.

(c) In the event that the transactions contemplated by the Specified Agreement are consummated in accordance therewith following the Closing, but prior to the date that is ninety (90) days following the Closing Date (the "Specified Date"), and Purchaser (or its applicable Affiliate) actually receives the Closing Date Payment (as defined in the Specified Agreement) prior to the Specified Date, Purchaser shall promptly deliver to Sellers, by wire transfer of immediately available funds to such bank account as shall be designated in writing by CTI, cash in an aggregate amount equal to the Adjusted Specified Closing Date Payment. For purposes of this Agreement, the "Adjusted Specified Closing Date Payment" shall mean the amount equal to (i) the Closing Date Payment (as defined in the Specified Agreement) less (ii) the aggregate amount of all costs, expenses and Taxes incurred by Purchaser and its Affiliates in connection with, or in consummating, the transactions contemplated by the Specified Agreement from and after the Closing, which Taxes shall be computed by Purchaser in its good faith discretion and by assuming that Purchaser and its applicable Affiliates have no Tax attributes or assets other than any basis in the assets sold pursuant to the Specified Agreement actually available to the applicable Affiliate of Purchaser acquiring such assets under the terms of this Agreement. Notwithstanding anything to the contrary herein, including Sections 1.1(a), 1.1(s), 1.2(b) and 1.2(l) or in the definition of Excluded Data Center Contracts, in the event that the transactions contemplated by the Specified Agreement are consummated following the Closing, but prior to the Specified Date, (i) the Specified Agreement shall be deemed an Excluded Contract and (ii) the "Acquired Assets" (as defined in and only to the extent defined in the Specified Agreement) shall be deemed Excluded Assets, in the case of each of the foregoing clauses (i) and (ii), as of the Closing for all purposes of this Agreement. In furtherance of the foregoing, the Parties will execute and deliver, or cause to be executed and delivered, all such documents and instruments, and will take, or cause to be taken, all such further or other actions as may be reasonably necessary or desirable to evidence and effectuate the transactions contemplated in this Section 2.1(c).

2.2 Deposit.

(a) Purchaser will, no later than forty-eight (48) hours after the date hereof, make, or cause to be made, an earnest money deposit with Acquiom Clearinghouse LLC (the "Escrow Agent") in the amount equal to $77,500,000 (the "Deposit"), by wire transfer of immediately available funds for deposit into a separate segregated, interest bearing escrow account (the "Escrow Account") maintained by the Escrow Agent in accordance with the Bidding Procedures Order and established pursuant to the escrow agreement, dated as of the date hereof, by and among CTI, Purchaser and the Escrow Agent (the "Escrow Agreement"). The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any Seller or Purchaser and, if the Closing occurs, shall be applied in accordance with Section 2.2(e).

(b) If this Agreement has been terminated by Sellers pursuant to Section 8.1(d) or 8.1(f) (or by Purchaser pursuant to Section 8.1(c), in circumstances where Sellers would be entitled to terminate this Agreement pursuant to Section 8.1(d) or 8.1(f)), then the Parties shall promptly, but in any event within five (5) Business Days after such termination hereof, deliver joint written instructions to the Escrow Agent directing the Escrow Agent to transfer by wire transfer of immediately available funds 100% of the Deposit (together with any and all investment interest thereon, if any) to such account(s) as may be designated by Seller, and Seller shall retain the Deposit (together with any and all investment interest thereon if any).

(c) If this Agreement has been terminated by any Party, other than as contemplated by Section 2.2(b), then the Parties shall promptly, but in any event within five (5) Business Days after such termination hereof, deliver joint written instructions to the Escrow Agent directing the Escrow Agent to transfer by wire transfer of immediately available funds 100% of the Deposit (together with any and all investment interest thereon, if any) to such account(s) as may be designated by Purchaser, and the Deposit, together with any and all investment interest thereon, if any, shall be returned to Purchaser within five (5) Business Days after such termination.

(d) The Parties agree that Sellers' right to retain the Deposit, as set forth in Section 2.2(b), is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Sellers for their efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision.

(e) If the Closing occurs, at the Closing, the Parties shall deliver joint written instructions to the Escrow Agent directing the Escrow Agent to transfer, by wire transfer of immediately available funds, an amount equal to (i) 100% of the Deposit minus (ii) the Adjustment Escrow Amount to such account(s) as may be designated by Seller as a credit toward payment of the Cash Payment pursuant to Section 2.1(a), and the remaining portion of the Deposit in the Escrow Account shall continue to be held in accordance with the Escrow Agreement and the terms and conditions of this Agreement.

2.3 Closing.

(a) Except as set forth in Section 2.3(b), if applicable, the closing of the purchase and sale of the Acquired Assets, the delivery of the Closing Date Payment, and the assumption of the Assumed Liabilities in accordance with this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022) at 10:00 a.m. Eastern Time on the fourth ($4^{th}$) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or due waiver (by the Party entitled to the benefit of such condition) at the Closing), or at such other place and time as the Parties may agree in writing; provided that, without limiting the foregoing, the Closing Date will coincide with the Effective Date of the Plan; provided, further, that, notwithstanding the full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in

Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or due waiver (by the Party entitled to the benefit of such condition) at the Closing), the Closing shall not occur prior to January 2, 2024 without the prior written consent of the Purchaser. The date on which the Closing actually occurs is referred to herein as the "Closing Date."

(b) Notwithstanding the generality of Section 2.3(a), if Purchaser provides CTI with written notice, at least ten (10) Business Days prior to the anticipated Closing Date, of its election to effect (x) the UK Transaction in accordance with Section 6.18(a), (y) the Germany Transaction in accordance with Section 6.18(b), or (z) the Singapore Transaction in accordance with Section 6.18(c) (any such notice, a "DLR Election Notice", and any transactions to be consummated in accordance with such a DLR Election Notice, a "DLR Transaction", and collectively, the "DLR Transactions"), then at the Closing, the Parties shall take, or cause to be taken, the following actions in the order set forth below (it being understood that no successive step shall be undertaken or initiated until the immediately preceding step has been completed), it being understood that the Parties shall coordinate timing of the payments in clause (i) below at such times which are feasible in the time zones of the applicable jurisdictions:

(i) *first*, (w) the consummation of the UK Transaction and the delivery of the UK Consideration Payment in accordance with Section 6.18(a), (x) the consummation of the Germany Transaction and the delivery of the Germany Consideration Payment in accordance with Section 6.18(b), (y) the consummation of the Singapore Transaction and the delivery of the Singapore Consideration Payment in accordance with Section 6.18(c), and (z) the consummation of the US Intangibles Transfer and the delivery of the US Intangibles Consideration Payment in accordance with Section 6.18(d), in the case of each of the foregoing clauses (w), (x), (y) and (z), occurring simultaneously and solely to the extent contemplated in the DLR Election Notice provided by Purchaser to CTI in accordance with this Section 2.3(b);

(ii) *second*, the distribution of the Aggregate DLR Consideration Amount to an applicable Seller(s) in accordance with Section 6.20; and

(iii) *third*, the consummation of the remaining transactions contemplated by this Agreement to be completed at the Closing pursuant to Section 2.3, taking into account the foregoing clauses (i) and (ii).

2.4 Closing Deliveries by Sellers. At or prior to the Closing, the Sellers shall deliver to Purchaser (or its applicable Designee), or in the case of the Adjustment Escrow Amount, the Escrow Agent:

(a) one or more applicable bill(s) of sale and assignment and assumption agreement(s) substantially in the form of Exhibit A (each, an "Assignment and Assumption Agreement"), each with respect to such Acquired Assets and Assumed Liabilities as determined by Purchaser (but all of which shall, in the aggregate, include all Acquired Assets and Assumed Liabilities), duly executed by the applicable Sellers;

(b) a short-form patent assignment agreement substantially in the form of Exhibit B, duly executed by the applicable Sellers;

(c) a short-form trademark assignment agreement substantially in the form of Exhibit C, duly executed by the applicable Sellers;

(d) a short-form copyright assignment agreement substantially in the form of Exhibit D, duly executed by the applicable Sellers;

(e) a short-form domain name transfer agreement substantially in the form of Exhibit G, duly executed by the applicable Sellers;

(f) instruments, agreement, or other documents, in each ease in customary form that are necessary or advisable to transfer the Equity Interests of the Transferred Subsidiaries to Purchaser in the manner required by applicable Law, which instruments, agreement, or documents shall not expand any representation or warranty, or any remedy or Liability, of any Party, duly executed by the applicable Sellers, together with certificates representing all of the Equity Interests of the Transferred Subsidiaries (to the extent that such Equity Interests are certificated), each in a form reasonably satisfactory to Sellers and Purchaser;

(g) an assignment and assumption (or, if requested by Purchaser, assignments and assumptions) of lease for the Acquired Leases substantially in the form of Exhibit E (the "Assignment and Assumption of Lease"), duly executed by Sellers (and, in the case of each Acquired Lease of record, the applicable assignment and assumption shall be in a form customary for recordation in each applicable jurisdiction or, in each case, Sellers shall deliver to Purchaser a memorandum thereof in a form customary for recordation in each applicable jurisdiction duly executed by the applicable Seller, in each case, which assignments and assumptions and memoranda shall not expand any representation or warranty, of any agreement or Liability of any Party);

(h) a quit claim deed with respect to each Owned Real Property, duly executed by the applicable Sellers;

(i) an IRS Form W-9 or IRS Form W-8, as applicable, executed by each Seller or such Seller's regarded owner for U.S. federal income Tax purposes;

(j) where applicable, the joint election(s) contemplated by Section 9.1(b);

(k) where applicable, the Clearance Certificate(s) contemplated by Section 9.1(d);

(l) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of CTI certifying that the conditions set forth in Sections 7.2(a), 7.2(b) and 7.2(d) have been satisfied;

(m) if a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b) and such DLR Election Notice contemplates the consummation of the Germany Transaction, the Germany Lease Termination Agreement(s) duly executed by the Germany Seller;

(n) if a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b) and such DLR Election Notice contemplates a Singapore Lease Termination, the Singapore Lease Termination Agreement(s) duly executed by the Singapore Seller;

(o) a joint written instruction to the Escrow Agent to release a portion of the Deposit in accordance with Section 2.2(e), duly executed by CTI; and

(p) any additional instruments, agreements and other documents, each in form reasonably satisfactory to Sellers and Purchaser and customary for each applicable jurisdiction, that are required by local Law to be, or are customarily, filed or recorded with deeds or assignments and assumptions of lease (or memoranda thereof) in the applicable jurisdiction to give effect to this Agreement or required in connection with the consummation of any DLR Transaction, including, in each case, certificates, filings, Contracts, agreements or other documentation reasonably requested by Purchaser, in each case duly executed by the applicable Seller, which instruments, agreements, and documents shall not expand any representation or warranty, or any remedy or Liability, of any Party.

2.5 Closing Deliveries by Purchaser. At the Closing, Purchaser (or its applicable Designee) shall deliver to (or at the direction of) Sellers:

(a) the Closing Date Payment; provided that if a DLR Election Notice is delivered by Purchaser in accordance with Section 2.3(b), then the Aggregate DLR Consideration Amount shall first be paid to the UK Seller, the Germany Seller, or the Singapore Seller, as applicable, and distributed pursuant to Section 6.20 (as the DLR Closing Proceeds) prior to the payment of the Closing Date Payment hereunder;

(b) the Assignment and Assumption Agreement(s), duly executed by Purchaser (or its applicable Designee);

(c) a short-form patent assignment agreement substantially in the form of Exhibit B, duly executed by the Purchaser;

(d) a short-form trademark assignment agreement substantially in the form of Exhibit C, duly executed by the Purchaser;

(e) a short-form copyright assignment agreement substantially in the form of Exhibit D, duly executed by Purchaser;

(f) a short-form domain name transfer agreement substantially in the form of Exhibit G, duly executed by the applicable Sellers;

(g) each Assignment and Assumption of Lease, duly executed by Purchaser;

(h) if a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b), and such DLR Election Notice contemplates the consummation of the Germany Transaction, the Germany Lease Termination Agreement(s) duly executed by the applicable Designee or its Affiliate;

(i) if a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b) and such DLR Election Notice contemplates a Singapore Lease Termination, the Singapore Lease Termination Agreement(s) duly executed by the applicable Designee or its Affiliate;

(j) where applicable, the joint election(s) contemplated by Section 9.1(b);

(k) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied;

(l) a joint written instruction to the Escrow Agent to release a portion of the Deposit in accordance with Section 2.2(e), duly executed by Purchaser; and

(m) any additional instruments, agreements and other documents, each in form reasonably satisfactory to the Sellers and Purchaser and customary for each applicable jurisdiction, that are required by local Law to be, or are customarily, filed or recorded with deeds or assignments and assumptions of lease (or memoranda thereof) in the applicable jurisdiction to give effect to this Agreement, in each case duly executed by Purchaser, which instruments, agreements, and documents shall not expand any representation or warranty, or any remedy or Liability, of any Party.

2.6 Post-Closing Adjustment.

(a) Within ninety (90) days after the Closing Date, Purchaser shall deliver (or shall cause to be delivered) to CTI (on behalf of all of the Sellers) a statement (the "Statement") setting forth Purchaser's good faith calculations of (i) Cash Amount, (ii) Closing Working Capital and the resulting estimated Working Capital Overage or Working Capital Underage, if any, (iii) the Factoring Facility Payoff Amount and (iv) the Adjustment Amount resulting therefrom (which may be expressed as a positive or negative number), accompanied by reasonably detailed supporting documentation for the estimates and calculations contained therein, including changes from the corresponding amounts in the Estimated Closing Statement. Purchaser shall not amend, supplement or modify the Statement following its delivery to CTI. The Cash Amount, the Closing Working Capital, the Working Capital Overage or Working Capital Underage, as applicable, the Factoring Facility Payoff Amount and the Adjustment Amount will be determined in accordance with the definitions set forth in this Agreement and will not include any changes in assets or liabilities as a result of purchase accounting adjustments. The Parties agree that the purpose of determining the Final Adjustment Amount is solely to accurately measure changes (if any) in the Estimated Adjustment Amount set forth in the Estimated Closing Statement in accordance with this Agreement (including Exhibit F) in order to determine the Seller Adjustment Amount or Purchaser Adjustment Amount, as applicable, and that such processes are not intended to permit the introduction of principles, policies, practices, procedures, methodologies, classifications or methods that are different from those set forth in Exhibit F.

(b) The Statement shall become final and binding upon all of the Parties at 5:00 p.m. in New York, New York on the thirtieth (30th) day following the date on which the Statement was timely delivered by Purchaser to CTI within the applicable number of days as set

forth in Section 2.6(a), unless CTI (on behalf of the Sellers) delivers written notice of its disagreement with the Statement (a "Notice of Disagreement") to Purchaser prior to such time. Any Notice of Disagreement shall specify in reasonable detail the nature and the amount of any disagreement so asserted. If a Notice of Disagreement is received by Purchaser in accordance with the first sentence of this Section 2.6(b) then the Statement (as revised in accordance with this Section 2.6(b)) shall become final and binding upon the Sellers and Purchaser on the earlier of (i) the date CTI (on behalf of the Sellers) and Purchaser resolve in writing any and all differences they have with respect to the matters specified in the Notice of Disagreement and (ii) if any differences remain that CTI and Purchaser are unable to resolve following the Discussion Period referred to below, the date any such remaining disputed matters are finally resolved in writing by the Independent Accountant. During the fourteen (14)-day period (or such longer period as the Parties may agree in writing, the "Discussion Period") following the delivery of a Notice of Disagreement, CTI (on behalf of the Sellers) and Purchaser shall seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Notice of Disagreement. All discussions related thereto will be governed by Rule 408 of the Federal Rules of Evidence (as in effect as of the date of this Agreement) and any applicable similar state rule, unless otherwise agreed in writing by Sellers and Purchaser. If at the end of such Discussion Period, CTI (on behalf of the Sellers) and Purchaser have not resolved in writing the matters specified in the Notice of Disagreement, then, no later than ten (10) days following such Discussion Period, CTI and Purchaser shall submit to the Independent Accountant for resolution, in accordance with the standards set forth in this Section 2.6. Each of CTI (on behalf of the Sellers) and Purchaser shall use reasonable efforts to cause the Independent Accountant to render a written decision resolving the matters submitted to the Independent Accountant within thirty (30) days of the receipt of such submission, and the Independent Accountant shall resolve only matters that remain in dispute as submitted by the Parties. Purchaser and CTI (on behalf of the Sellers) will execute a customary engagement letter if so requested by the Independent Accountant and will cooperate with the Independent Accountant during the term of its engagement. The Independent Accountant will have exclusive jurisdiction over any disputes arising out of or relating to the adjustments pursuant to this Section 2.6, and resort to the process involving the Independent Accountant as provided in this Section 2.6(b) will be the only recourse and remedy of the Parties against one another with respect to any such dispute. The scope of the disputes to be resolved by the Independent Accountant shall be limited to correcting mathematical errors and determining whether the items in dispute were determined in accordance with this Agreement. The Independent Accountant's decision shall be based solely on written submissions by CTI (on behalf of the Sellers) and Purchaser and their respective Advisors and not by independent review, acting as an accountant and not as an arbitrator, and, shall be final and binding on all of the Parties and not subject to appeal or further review. The Independent Accountant may not assign a value for any item that is greater than the greatest value for such item claimed by either Party or smaller than the smallest value for such item claimed by either Party. Judgment may be entered upon the determination of the Independent Accountant in any court having jurisdiction over the Party against which such determination is to be enforced. The fees, costs and expenses of the Independent Accountant incurred pursuant to this Section 2.6 (the "Accounting Fees") shall be borne *pro rata* as between the Sellers, on the one hand, and Purchaser, on the other hand, in proportion to the final allocation made by such Independent Accountant of the disputed items weighted in relation to the claims made by CTI and Purchaser, such that the prevailing Party pays the lesser proportion of such fees, costs and expenses. For example, if Purchaser claims that the

appropriate adjustments are, in the aggregate, $1,000 greater than the amount determined by CTI and if the Independent Accountant ultimately resolves the dispute by awarding to Purchaser an aggregate of $300 of the $1,000 contested, then the fees, costs and expenses of the Independent Accountant will be allocated 30% (*i.e.*, 300 ÷ 1,000) to the Sellers and 70% (*i.e.*, 700 ÷ 1,000) to Purchaser. In connection with its determination of Final Adjustment Amount, the Independent Accountant will, pursuant to the terms of this Section 2.6(b), also determine the allocation of the Accounting Fees between Purchaser and Sellers, which such determination will be final, conclusive and binding upon the Parties.

(c) As used herein, "Final Adjustment Amount" means (i) if CTI (on behalf of the Sellers) fails to deliver a Notice of Disagreement in accordance with Section 2.6(b), the Adjustment Amount as set forth in the Statement or (ii) if the Adjustment Amount is resolved by Purchaser and CTI (on behalf of the Sellers) or by submission of any disputes to the Independent Accountant, as contemplated by Section 2.6(b), the Adjustment Amount as so resolved.

(d) Upon the determination of the Final Adjustment Amount in accordance with Section 2.6(b):

(i) if the Final Adjustment Amount exceeds the Estimated Adjustment Amount (any such excess, the "Seller Adjustment Amount"), within five (5) Business Days after the Final Adjustment Amount is determined (A) Purchaser shall pay to CTI, by wire transfer of immediately available funds, an amount equal to the lesser of (x) an amount equal to the Seller Adjustment Amount and (y) an amount equal to the Adjustment Escrow Amount, it being acknowledged and agreed by the Parties that the maximum amount Purchaser shall be required to pay pursuant to this Section 2.6 shall not exceed the Adjustment Escrow Amount even if such amount is less than the Seller Adjustment Amount and (B) Purchaser and CTI shall provide joint written instruction to the Escrow Agent directing the Escrow Agent to release to CTI the Adjustment Escrow Amount from the Escrow Account;

(ii) if the Estimated Adjustment Amount exceeds the Final Adjustment Amount (any such excess, the "Purchaser Adjustment Amount"), within five (5) Business Days after the Final Adjustment Amount is determined: (A) CTI and Purchaser shall provide joint written instruction to the Escrow Agent directing the Escrow Agent to make payment from the Escrow Account by wire transfer of immediately available funds to Purchaser of an amount equal to such Purchaser Adjustment Amount, which amount shall not exceed the Adjustment Escrow Amount, and (B) if the Purchaser Adjustment Amount is less than the Adjustment Escrow Amount, Purchaser and CTI shall provide joint written instruction to the Escrow Agent directing the Escrow Agent to release to CTI the amount by which the Adjustment Escrow Amount exceeds the Purchaser Adjustment Amount; or

(iii) if the Final Adjustment Amount equals the Estimated Adjustment Amount, within five (5) Business Days after the Final Adjustment Amount is determined Purchaser and CTI shall provide joint written instruction to the Escrow Agent directing the Escrow Agent to release to CTI the Adjustment Escrow Amount from the Escrow Account. Upon payment of the amounts provided in this Section 2.6(d), none of the Parties may make or assert any claim under this Section 2.6. Any payment to be made pursuant to this

Section 2.6(d) will be treated by all Parties for applicable Tax purposes as an adjustment to the Purchase Price (unless otherwise required by applicable Law).

(e) Purchaser agrees that payment of the Purchaser Adjustment Amount (if any) from the Adjustment Escrow Amount in the Escrow Account in accordance with the Escrow Agreement will be the sole and exclusive remedy for Purchaser for payment of the Purchaser Adjustment Amount, if any, and the Adjustment Escrow Amount in the Escrow Account will be Purchaser's sole and exclusive source of recovery for any amounts owing to Purchaser pursuant to this Section 2.6, even if the Purchaser Adjustment Amount exceeds the Adjustment Escrow Amount. The Parties further agree that the adjustments to the Adjustment Amount provided for in this Section 2.6, and the dispute resolution provisions provided for in this Section 2.6, will be the exclusive remedy for the matters addressed or that could be addressed by this Section 2.6. For the avoidance of doubt, and without limiting the generality of the foregoing, no claim by Purchaser or any of its Affiliates or advisors for the payment of the Purchaser Adjustment Amount will be asserted against any of the Sellers.

(f) No actions taken by Purchaser, on its own behalf or on behalf of the Acquired Entities, on or following the Closing Date, shall be given effect for purposes of determining the Adjustment Amount or any component thereof. During the period of time from and after the Closing Date through the final determination and payment of any Seller Adjustment Amount or Purchaser Adjustment Amount in accordance with this Section 2.6, Purchaser shall afford, and shall cause the Acquired Entities to afford, to CTI and its Advisors reasonable access during normal business hours upon reasonable advance notice to all the properties, books, Contracts, personnel, Advisors (subject to execution of customary access letters) and records of Purchaser and the Acquired Entities and such Advisors (including work papers subject to execution of customary access letters) relevant to the Sellers' review of the Statement and Purchaser's determination of the Adjustment Amount or any component thereof in accordance with this Section 2.6.

2.7 Withholding. Each of Purchaser and its Affiliates, and the Escrow Agent, shall be entitled to deduct and withhold from amounts otherwise payable pursuant to this Agreement to any Seller (including pursuant to Section 2.2) such amounts as Purchaser (or its applicable Affiliate), or the Escrow Agent, is required to deduct and withhold under applicable Tax law, with respect to the making of such payment; provided, however, that except for any amounts that are withheld by reason of any Seller's failure to provide the certificate described in Section 2.4(i), Purchaser shall use commercially reasonable efforts to notify such Seller at least five (5) Business Days prior to the Closing Date of any potentially applicable withholding requirement of which Purchaser is aware, and each of the Parties agrees to take commercially reasonable efforts to cooperate to eliminate or reduce any such deduction or withholding. All amounts so withheld shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made, and shall be timely paid by Purchaser (or its applicable Affiliate) to the applicable Governmental Body.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as (a) disclosed in the forms, reports, schedules, statements, exhibits and other documents filed with the SEC by CTI in respect of Sellers and their business during the twelve (12) months preceding the date hereof and solely to the extent publicly available on the SEC's EDGAR database (the "Filed SEC Documents") (other than any disclosures set forth under the headings "Risk Factors" or "Forward-Looking Statements" in such Filed SEC Documents and any other disclosures included therein to the extent they are forward-looking in nature) or (ii) set forth in the Schedules delivered by Sellers concurrently herewith (each, a "Schedule" and collectively, the "Schedules") and subject to Section 10.10, Sellers represent and warrant to Purchaser as follows.

3.1 Organization and Qualification.

(a) Except as set forth in Schedule 3.1(a), (i) each Seller is a corporation, unlimited liability corporation, or limited liability company, as applicable, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and (ii) each Acquired Entity is duly organized, validly existing and in good standing (where such concept is recognized under applicable Law) under the Laws of the jurisdiction of its organization. Except as set forth in Schedule 3.1(a), each Seller and Acquired Entity has all requisite corporate or similar organizational power and authority necessary to own or lease its assets and properties and to operate its business as it is now being conducted, subject to the provisions of the Bankruptcy Code, and is duly licensed or qualified to do business under the Laws of each jurisdiction in which the nature of its business or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) True, complete and correct copies of each of the Acquired Entities' Organizational Documents have been provided to Purchaser prior to the date hereof. All such Organizational Documents are in full force and effect on the date hereof and no Seller or Acquired Entity is in violation of any of the provisions of its Organizational Documents, except as would not reasonably be expected to be material to such Seller or Acquired Entity.

(c) Schedule 3.1(c) sets forth a true, complete and correct list of (i) each of the Acquired Entities and (ii) each jurisdiction in which each Seller and Acquired Entity is duly licensed or qualified to do business.

3.2 Authorization of Agreement.

(a) Subject to requisite Bankruptcy Court approvals, each Seller has all necessary corporate or similar organizational power and authority to execute and deliver this Agreement and the other Transaction Agreements to which each such Seller is a party and to perform its obligations hereunder and to consummate the Transactions.

(b) The execution, delivery and performance by each Seller of this Agreement and the other Transaction Agreements to which such Seller is a party, and the consummation by

such Seller of the Transactions, subject to requisite Bankruptcy Court approvals and CCAA Orders being granted (each as described in this Agreement), have been duly authorized by all requisite corporate action, limited liability company action or limited partnership action on the part of such Seller, as applicable, and no other organizational proceedings on such Seller's part are necessary to authorize the execution, delivery and performance by such Seller of this Agreement or the other Transaction Agreements and the consummation by it of the Transactions.

(c) Subject to requisite Bankruptcy Court approvals and CCAA Orders (as described in this Agreement), this Agreement and the other Transaction Agreements to which each Seller is a party have been, or will be, duly executed and delivered by such Seller and, assuming due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitutes, or will constitute, legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with its and their terms, except that such enforceability (a) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (b) is subject to general principles of equity, whether considered in a proceeding at law or in equity (collectively, the "Enforceability Exceptions").

3.3 Equity Interests of Acquired Entities.

(a) The issued and outstanding shares of capital stock or other Equity Interests of each of the Acquired Entities are as set forth on Schedule 3.3(a)(i), and there are no other issued or outstanding shares of capital stock or other Equity Interests of the Acquired Entities (except as authorized or issued pursuant to the UK Restructuring Transactions, to the extent applicable). All of the outstanding capital stock or other Equity Interests of the Acquired Entities are duly authorized, validly issued, fully paid and are non-assessable (where such concepts are legally recognized in the jurisdictions of organization of such Subsidiaries) and have not been issued in violation of applicable Law or any Contract (including preemptive rights or similar rights). The UK Seller's register of members is in compliance with applicable Law and true, correct and complete as of the Closing (a true, correct and complete copy of which has been provided to Purchaser prior to the Closing). Except as set forth on Schedule 3.3(a)(ii), there are no outstanding options, warrants, convertible, exercisable or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, rights to subscribe to, purchase rights, calls or commitments relating to the issuance, purchase, sale, redemption or repurchase of any capital stock or other Equity Interests issued by any Acquired Entities containing any equity features, or Contracts, commitments, understandings, arrangements or other obligations by which any of the Acquired Entities is bound to issue, deliver or sell, or cause to be issued, delivered or sold, additional capital stock or other Equity Interests, or options, warrants, convertible, exercisable or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, rights to subscribe to, purchase rights, calls or commitments relating to any capital stock or other Equity Interests of the Subsidiaries of the Sellers, or that otherwise give any Person the right to receive any benefits or rights similar to any rights enjoyed by or accruing to the holders of shares of capital stock or other Equity Interests of any Acquired Entities (including any rights to receive any payment in respect, or based on the price or value, thereof). None of the Sellers or their Subsidiaries is a party to any shareholders' agreement, voting trust agreement, registration rights agreement or other similar Contract or understanding relating to any Equity Interests of any Acquired Entities or any other Contract relating to the issuance, disposition, voting

or payment of dividends or distributions with respect to any Equity Interests of any Acquired Entities. There are no accrued and unpaid dividends with respect to any outstanding Equity Interests of any Acquired Entities, and no Acquired Entities have any obligation to pay any dividend or make any distribution in respect thereof. The issued and outstanding Equity Interests of each of the Acquired Entities are (i) owned of record by the Seller(s) or Subsidiaries of a Seller identified on Schedule 3.3(a)(iii) as owning such Equity Interests (or as identified on Exhibit H in connection with the UK Restructuring Transactions, to the extent applicable),(ii) owned free and clear of any Encumbrances (except for Encumbrances arising under applicable securities Laws) by the applicable Seller(s) or Subsidiaries of a Seller identified on Schedule 3.3(a)(iii) as owning such Equity Interests (or as identified on Exhibit H in connection with the UK Restructuring Transactions, to the extent applicable), and (iii) the applicable Seller(s) or Subsidiaries of a Seller have good, valid and marketable title (to the extent such concepts are applicable) to the Equity Interests identified on Schedule 3.3(a)(iii) as owned by such Seller or Subsidiary of a Seller (or as identified on Exhibit H in connection with the UK Restructuring Transactions, to the extent applicable). The Acquired Interests constitute all of the issued and outstanding Equity Interests of the Transferred Subsidiaries, all of which are owned beneficially and of record by the Sellers, free and clear of any Encumbrances (other than Encumbrances arising under applicable securities Laws). At Closing, Purchaser (or its Designee) will acquire good and valid title to the Acquired Interests, free and clear of all Encumbrances (other than transfer restrictions under applicable securities Laws).

(b) Except as set forth on Schedule 3.3(b), the Acquired Entities do not, directly or indirectly, (i) own, of record or beneficially, any Equity Interests or other interests in any Person or hold any right (contingent or otherwise) to acquire the same or (ii) have any obligations to contribute capital to, or loan any amounts to, invest in, or acquire Equity Interests of, any Person. The Acquired Entities do not have any outstanding bonds, debentures, notes or other obligations which provide the holders thereof the right to vote (or are convertible or exchangeable into or exercisable for securities having the right to vote) with the equityholders of the Acquired Entities on any matter.

3.4 Conflicts; Consents. Assuming that (a) the Confirmation Order and all other requisite Bankruptcy Court approvals and CCAA Orders are obtained (each as described in this Agreement), (b) the notices, authorizations, approvals, Orders, Permits or consents set forth on Schedule 3.4 are made, given or obtained (as applicable), (c) the requirements of the HSR Act are complied with, and (d) any filings required by any applicable federal or state securities or "blue sky" Laws are made, the execution and delivery by Sellers of this Agreement and the other Transaction Agreements, the consummation by Sellers of the Transactions, performance and compliance by Sellers with any of the terms or provisions hereof or thereof, do not and will not (i) conflict with or violate any provision of the Organizational Documents of any Seller or Acquired Entity (ii) except as set forth on Schedule 3.4, conflict with, violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or result in the acceleration of any obligation under or give rise to a right of termination, modification, acceleration or cancelation of any obligation or to the loss of any benefit under, any of the terms or provisions of any Material Contract, Permit, loan or credit agreement or other Contract to which any Seller or Acquired Entity is party or by which any Seller or Acquired Entity is bound or to which any the Acquired Assets is subject, (iii) conflict with or violate in any material respect, any Law or Order applicable to any Seller, Acquired Entity or any of the Acquired Assets or by which any Seller, Acquired Entity or

any of the Acquired Assets may be bound or affected or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets owned by any Seller or Acquired Entity, except, in the case of clauses (ii) or (iv), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.5 Financial Statements; No Undisclosed Liabilities; Internal Controls.

(a) (i) Included in the Filed SEC Documents is CTI's Form 10K (as amended by the attached Form 10K/A), which includes the audited consolidated balance sheets of CTI and its Subsidiaries as of December 31, 2022, and the related consolidated statements of operations, comprehensive loss, changes in shareholders' equity and cash flows for the fiscal year then ended (collectively, the "Audited 2022 Financial Statements"), (ii) attached to Schedule 3.5(a) are Sellers' unaudited condensed consolidated balance sheets as of June 30, 2023 (the "Latest Balance Sheet"), and the related condensed consolidated statements of operations, comprehensive loss, shareholders' equity and cash flows for the portion of each fiscal year then ended and (iii) attached to Schedule 3.5(a) are the available standalone balance sheets, income statements, shareholders' equity and cash flows or other financial statements, as applicable, in each case, as described on, for the Acquired Entities listed on, and as of the date or the periods indicated on Schedule 3.5(a) (together with the Audited 2022 Financial Statements and the financial statements referenced in the foregoing clause (ii), the "Financial Statements"). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of CTI and its Subsidiaries (or applicable Acquired Entity, as the case may be) as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown, except for, in the case of unaudited financials, (x) the absence of footnote disclosures (none of which are materially different from those presented in the Audited 2022 Financial Statements), and (y) changes resulting from normal and recurring fiscal year end adjustment (none of which are expected to be material, individually or in the aggregate).

(b) CTI and its Subsidiaries have established and maintain disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act, that are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of CTI and its Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of CTI and its Subsidiaries are being made only in accordance with authorizations of management and directors of CTI and its Subsidiaries (as applicable) and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of CTI and its Subsidiaries' assets that could have a material effect on its Financial Statements. CTI and its Subsidiaries' management has completed an assessment of the effectiveness of CTI and its Subsidiaries' internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended December 31, 2022, and such assessment concluded that such internal control system was effective. Except as set forth on Schedule 3.5(b), since January 1, 2021, none of CTI, its

Subsidiaries or their independent registered public accounting firm has identified or been made aware of (A) "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of CTI and its Subsidiaries' internal controls over financial reporting which would reasonably be expected to adversely affect in any material respect CTI's or its Subsidiaries' ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in CTI and its Subsidiaries' internal control over financial reporting with respect to CTI and its Subsidiaries. CTI and its Subsidiaries do not maintain any "off-balance-sheet arrangement" within the meaning of Item 303 of Regulation S-K of the SEC.

(c) Except (i) as specifically and adequately reflected in the latest Financial Statements, (ii) as set forth in Schedule 3.5(c), (iii) for Liabilities that have arisen since the date of the Latest Balance Sheet in the Ordinary Course and are not material to CTI or any of its Subsidiaries (individually or in the aggregate), (iv) Liabilities arising under the executory portion of a Contract (excluding in each case Liabilities for breach, non-performance or default), (v) Liabilities in connection with the Bankruptcy Cases, the Transactions, or the negotiation, execution, and performance of the Transactions and (vi) Liabilities to the extent included in the computation of Closing Working Capital, CTI or its Subsidiaries do not have any Liabilities of the type required to be accrued on or reserved against in a consolidated balance sheet prepared in accordance with GAAP consistently applied.

3.6 Absence of Certain Changes or Developments. Except as set forth on Schedule 3.6 and the Bankruptcy Cases or in connection with the Transactions or the Bankruptcy Cases or preparation therefor (including debtor-in-possession financing), since the date of the Latest Balance Sheet, (a) the Sellers and their Subsidiaries have conducted their respective businesses in the Ordinary Course, (b) no Effect has occurred that has had, or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (c) there has not occurred any action that would require the consent of Purchaser pursuant to Section 6.1(b) if taken after the date of this Agreement and prior to Closing.

3.7 Legal Actions. Except as set forth on Schedule 3.7, there are no, and during the three (3) years preceding the date hereof there have been no, (a) Actions pending or threatened (in writing or, to the Knowledge of Seller, orally) to which any Seller or any of their Subsidiaries is or was a party or to which any property, rights or interests of any of them is or was subject, except as would not reasonably be expected to be material and adverse to any Acquired Entity or the Acquired Assets and the Assumed Liabilities, taken as a whole, or (b) Orders imposed upon the Sellers or any of their Subsidiaries, in each case, by or before any Governmental Body. Schedule 3.7 sets forth, as of the date hereof, each Action pending against CTI or any of its Subsidiaries by or before any Governmental Body (other than the Bankruptcy Cases) that (i) seeks or reasonably could be expected to result in fines or damages of more than $1,000,000 or relates to a criminal matter or calls for injunctive relief or other restriction that would reasonably be expected to be material to any Acquired Entity or the Acquired Assets and the Assumed Liabilities, taken as a whole, or (ii) challenges the validity or enforceability of this Agreement or any other Transaction Agreement or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the consummation of any of the Transactions. During the three (3) years preceding the date hereof there has been no formal written or, to the Knowledge of the Sellers, oral

allegation of sexual harassment or sexual misconduct submitted to any Seller or any of their Subsidiaries against any employee who is an executive officer, director, or management level employee in their capacities as such.

3.8 Compliance with Laws; Permits; Escheat.

(a) Except as set forth on Schedule 3.8(a)(i), each Seller and Subsidiary of a Seller is, and during the three (3) years preceding the date hereof has been, in compliance in all material respects with the requirements of all Laws applicable to it or to its properties (including the ownership and operation of the Acquired Assets). Except as set forth on Schedule 3.8(a)(ii) or as related to or as a result of the filing or pendency of the Bankruptcy Cases and the CCAA Proceeding, during the three (3) years preceding the date hereof (A) no Seller or Subsidiary of a Seller has received any written notice of, or been charged with, the material violation of any Laws, and (B) to the Knowledge of Sellers, no event has occurred or circumstance exists that (with or without notice, passage of time, or both), individually or in the aggregate, would constitute or result in a failure by any Seller or Subsidiary of a Seller to comply, in any material respect, with any applicable Law. Except as set forth on Schedule 3.8(a)(iii) as related to or as a result of the filing or pendency of the Bankruptcy Cases and the CCAA Proceeding, no investigation, review or Action by any Governmental Body in relation to any actual or alleged material violation of Law by any Seller or Subsidiary of a Seller is pending or, to the Knowledge of Sellers, threatened, nor has any Seller or Subsidiary of a Seller received any written notice from any Governmental Body indicating an intention to conduct the same.

(b) Except as set forth on Schedule 3.8(b)(i), the Sellers and their Subsidiaries possess all Permits that are necessary or required to conduct their businesses as currently conducted, and all such Permits are in full force and effect and will continue to be in full force and effect following the consummation of the Transactions, except for such Permits, the failure to have so obtained, made or delivered would not, individually or in the aggregate, reasonably be expected to be material to any Acquired Entity or the Acquired Assets and the Assumed Liabilities, taken as a whole. The Sellers and their Subsidiaries are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit required for the operation of their businesses as presently conducted and to which they are parties, except where such default or violation would not be reasonably expected to be, individually or in the aggregate, material to any Acquired Entity or the Acquired Assets and the Assumed Liabilities, taken as a whole. Schedule 3.8(b)(ii) sets forth a true, complete and correct list of all material Permits maintained by the Sellers and their Subsidiaries that are necessary or required to conduct their businesses as currently conducted.

(c) No Action is pending or, to the Knowledge of Sellers, threatened to terminate, revoke, limit, cancel, suspend or modify any Permit or Permits that, individually or in the aggregate, are material to the operation of the business of the Sellers and their Subsidiaries, and no Seller or Subsidiary of a Seller has received notice from any Governmental Body that (i) any such Permit will be revoked or not reissued on the same or similar terms, (ii) any application for any new Permit by any Seller or any of its Subsidiaries or renewal of any Permit or Permits that, individually or in the aggregate, are material to the operation of the business of the Sellers and their Subsidiaries will be denied, or (iii) the Permit holder is in material violation of any Permit

or Permits that, individually or in the aggregate, are material to the operation of the business of the Sellers and their Subsidiaries.

(d) During the past three (3) years, each Seller and Subsidiary of Seller has been and is in compliance in all material respects with all applicable International Trade Laws and no Seller or Subsidiary of a Seller or, to the Knowledge of Sellers, any other Person acting on their behalf has engaged in or is currently engaged in any conduct that is prohibited under International Trade Laws. Without limiting any of the foregoing, during the past three (3) years, no Seller or Subsidiary of a Seller or any of their respective officers, directors, or employees, or, to the Knowledge of Seller, any other Person acting on their behalf has engaged in any business or dealings, directly or indirectly, involving (i) any country or territory that is or whose government is the target of comprehensive sanctions imposed by the United States, Canada, the European Union, or the United Kingdom, as of the date of this Agreement (Cuba, Iran, North Korea, Syria, Venezuela, the Crimea region, and the so-called Donetsk and Luhansk People's Republics; each a "Sanctioned Jurisdiction"); or (ii) a Person that is designated on, or that is owned or controlled by a Person that is designated on any list of sanctioned parties maintained by the United States, Canada, the United Kingdom, or the European Union, including the list of Specially Designated Nationals and Blocked Persons maintained by OFAC (any such Person a "Sanctioned Person") in violation of applicable Law.

(e) No Seller or Subsidiary of a Seller or any of their respective directors, officers, employees, shareholders, or, to the Knowledge of Seller, other Persons acting on their behalf is (i) a Sanctioned Person; or (ii) located, organized, or resident in a Sanctioned Jurisdiction.

(f) During the past three (3) years, each Seller and Subsidiary of a Seller has been and is in compliance in all material respects with all applicable Anti-Corruption Laws, and no Seller or Subsidiary of a Seller or any of their respective directors, officers, employees, or, to the Knowledge of Sellers, any other Person acting on their behalf has violated any Anti-Corruption Law. Without limiting the foregoing, during the past three (3) years, no Seller or Subsidiary of a Seller, or any of their respective directors, officers, employees, or, to the Knowledge of Seller, any other Person acting on their behalf has paid, offered, promised, or authorized the payment of money or anything of value, directly or indirectly, to any Government Official, any political party, or any other Person for the purpose of influencing any act or decision or to secure any improper advantage in violation of Anti-Corruption Laws.

(g) During the past three (3) years, no Seller or Subsidiary of a Seller or any of their respective directors, officers, employees, or, to the Knowledge of Sellers, any other Person acting on their behalf has received from any Governmental Body or any other Person any written notice of any violation, alleged violation, or any suspected violation of any Anti-Corruption Law or International Trade Law, or conducted any internal investigation with respect to, or made any voluntary or involuntary disclosure to a Governmental Body concerning, any actual, suspected, or alleged violation of any Anti-Corruption Law or International Trade Law.

(h) Except as set forth in Schedule 3.8(h), all material reports or other filings required to be filed by or with respect to any Acquired Asset or Assumed Liabilities, and each Acquired Entity, relating to escheat or any abandoned or unclaimed property have been timely filed in compliance with applicable Law in all material respects. Each Seller, and each Subsidiary

of any Seller have complied in all material respects with all applicable escheat or abandoned or unclaimed property Laws.

3.9 Title to Properties; Sufficiency of Tangible Assets.

(a) Owned Real Property. Schedule 3.9(a) sets forth a true, complete and correct list of all Owned Real Property. The Sellers have a valid leasehold or sublease interest in each Leased Real Property. The Sellers and their Subsidiaries have good, valid and marketable title to the Owned Real Property, subject only to Permitted Encumbrances. With respect to the Owned Real Property: (i) except as set forth on Schedule 3.9(a), none of the Sellers or their Subsidiaries has leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof, which lease or grant remains in effect; and (ii) there are no outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(b) Leased Real Property. Schedule 3.9(b) sets forth the address of each Leased Real Property, and a true, complete and correct list of all Leases for each such Leased Real Property. The Sellers have made available to the Purchaser or the Purchaser's Advisors true, complete and correct copies of the Leases. Except as set forth on Schedule 3.9(b), with respect to each of the Leases: (i) subject of entry of the Confirmation Order (as to the applicable Seller), such Lease is legal, valid, binding, enforceable and in full force and effect, subject to the Enforceability Exceptions; (ii) to the Knowledge of Seller, there are no existing material disputes with respect to such Lease; (iii) except as a result of the commencement of the Bankruptcy Cases, none of Sellers, the Subsidiaries of the Sellers or, to the Knowledge of Seller, any other party to the Lease is in material breach or default under such Lease, and no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, would constitute such a material breach or default by any Seller, any Subsidiary of a Seller or, to the Knowledge of Seller, any other party to the Lease, or permit the termination, material modification or acceleration of rent under such Lease; (iv) neither the Sellers nor any of their Subsidiaries have subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof which sublease, license or grant remains in effect, except pursuant to co-location Contracts with customers; (v) the applicable Seller or Subsidiary of a Seller has good and valid leasehold title to the property demised thereby, subject only to Permitted Encumbrances and (vi) none of Sellers, the Subsidiaries of the Sellers or any other prior tenant under any Lease has granted any option, right of first offer or right of first refusal to purchase any rights of the tenant under such Lease;

(c) No Seller or Subsidiary thereof has received written notice from any Governmental Body regarding pending or threatened condemnation or eminent domain proceedings or their local equivalent affecting or relating to any Owned Real Property or Leased Real Property. No Seller or Subsidiary thereof is in material breach or default under any Permitted Encumbrance in respect of any Owned Real Property or Leased Real Property.

(d) Subject to requisite Bankruptcy Court or CCAA Court approvals as described in this Agreement, and assumption by the applicable Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs by the Sellers) and except as a result of the commencement of the Bankruptcy Cases, the Sellers and their Subsidiaries own good title to, or hold a valid leasehold interest in, all of the material tangible

property necessary in the conduct of their businesses as now conducted, free and clear of all Encumbrances, except for Permitted Encumbrances, other than any failure to own or hold such tangible property that is not material to the Acquired Entities or the Acquired Assets and the Assumed Liabilities, taken as a whole.

(e) All tangible assets of the Seller and their Subsidiaries are (i) in good working order and condition, ordinary wear and tear excepted, (ii) have been reasonably maintained, (iii) are suitable for the uses for which they are being utilized in the businesses conducted by the Sellers and theirs Subsidiaries, subject to replacement in accordance with Sellers' modernization plan, a copy of which has been made available to Purchaser, and (iv) comply in all material respects with all requirements under any Laws and any licenses which govern the use and operation thereof. The Acquired Assets include all the tangible properties and tangible, assets reasonably necessary, and are sufficient in all material respects, for the conduct of the businesses of the Sellers and their Subsidiaries as currently conducted, taking into account that Purchaser is not acquiring the Excluded Assets.

3.10 Material Contracts.

(a) Schedule 3.10 sets forth a list of each Material Contract, as of the date of this Agreement, including the applicable Seller or Subsidiary thereof who is a party thereto. For purposes of this Agreement, "Material Contract" means any Contract to which the Sellers or their Subsidiaries are party or by which a Seller or Subsidiary of a Seller is bound in connection with any of the Acquired Assets, in all cases other than any Employee Benefit Plan, that:

(i) is or would be required to be filed as an exhibit to CTI's Annual Report on Form 10-K pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act; provided that any such Contracts that are so filed are not required to be set forth on Schedule 3.10 but shall nonetheless constitute "Material Contracts";

(ii) relates to the formation, creation, governance, economics, or control of any joint venture, partnership or other similar arrangement;

(iii) (x) provides for Indebtedness for borrowed money of the Sellers or the Acquired Entities having an outstanding or committed amount in excess of $1,000,000, other than letters of credit and Indebtedness that constitutes Excluded Liabilities or (y) grants an Encumbrance (other than Permitted Encumbrances and Encumbrances to be removed by operation of the Confirmation Order) on all or any part of the assets of an Acquired Entity;

(iv) relates to the acquisition or disposition of any business, assets or properties (whether by merger, sale of stock, sale of assets or otherwise) for aggregate consideration under such Contract in excess of $2,500,000 pursuant to which any earn-out, indemnification or deferred or contingent payment obligations remain outstanding that would reasonably be expected to involve payments by or to the Sellers or the Acquired Entities of more than $1,000,000 after the date hereof (in each case, excluding for the avoidance of doubt, acquisitions or dispositions of Equipment in the Ordinary Course, or

of Equipment that is obsolete, worn out, surplus or no longer used or useful in the conduct of the business of the Sellers and their Subsidiaries);

(v) is a Contract pursuant to which a Seller or any Subsidiary of a Seller is required to make or is entitled to receive (or would reasonably be expected to make or receive) payments on an annual basis in excess of $3,500,000 in the aggregate, other than Contracts with Material Customers (which are the subject of Section 3.10(a)(vi));

(vi) is a Contract with a Material Customer or a Material Supplier or listed on Schedule 3.19;

(vii) contains any provision (A) limiting, in any material respect, the right of the Sellers or their Subsidiaries to engage in any business or compete with any Person, or operate anywhere in the world, (B) granting any exclusivity right to any third party or containing a "most favored nation" provision in favor of any third party, (C) containing any option, right of first refusal or preferential or similar right in favor of any third party or (D) that is a "take or pay" or similar provision requiring the business to make a minimum payment for goods or services from third party suppliers irrespective of usage;

(viii) is a Contract with a Governmental Body;

(ix) is a Contract that requires future capital expenditures in excess of $1,000,000;

(x) is a Contract under which a Seller or any Subsidiary of a Seller is (A) lessee of or holds or operates any personal property, owned by any other party, except for any lease of personal property under which the aggregate annual rental payments do not exceed $1,000,000, or (B) lessor of or permits any third party to hold or operate any personal property owned or controlled by a Seller or any Subsidiary of a Seller;

(xi) is a Contract the primary purpose of which the indemnification or holding harmless of any Person, other than those entered into in the Ordinary Course;

(xii) is a Contract relating to any swap, forward, futures, warrant, option or other derivative transaction;

(xiii) is a (A) letter of credit or surety agreement or (B) other similar undertaking or guarantee with respect to contractual performance of a third party;

(xiv) is a Contract pursuant to which a Seller or any of its Subsidiaries (A) receives a license to, or covenant not to be sued under, any Intellectual Property (other than (1) any license for commercial off-the-shelf Software costing or having an annual fee of less than $100,000, (2) Contracts relating to free or Open Source Software, and (3) Contracts primarily for the provision of services where the granting or obtaining any non-exclusive right to use any Intellectual Property is ancillary or incidental to the transactions contemplated in such Contract) ("Inbound IP Licenses") or (B) grants a license to, or covenant not to sue under, any Owned Intellectual Property (other than any non-exclusive licenses of Intellectual Property granted in the Ordinary Course); or

(xv) is a written or oral commitment or agreement to enter into any of the foregoing.

(b) Schedule 3.10(b) sets forth a list of each material Contract to which UK Seller (solely at the "LHR1" data center), Germany Seller, or Singapore Seller is a party, as of the date of this Agreement (organized by such Acquired Entity on the Schedule), each of which will be a "Material Contract" hereunder.

(c) Subject to requisite Bankruptcy Court approvals and CCAA Orders being granted (each as described in this Agreement), and assumption by the applicable Seller of the applicable Contract in accordance with applicable Law (including satisfaction by the Sellers of any applicable Cure Costs) and except (i) as a result of the commencement of the Bankruptcy Cases or CCAA Proceedings and (ii) with respect to any Contract that has previously expired in accordance with its terms, been terminated, restated, or replaced, (A) each Material Contract is valid and binding on the Seller or Subsidiary of a Seller that is a party thereto, as applicable, and, to the Knowledge of Sellers, each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions, (B) the applicable Seller or Subsidiary of a Seller, and, to the Knowledge of Sellers, any other party thereto, have performed all obligations required to be performed by it under each Material Contract, (C) the Sellers and their Subsidiaries have received no written notice of the existence of any breach or default on the part of any Seller or Subsidiary of a Seller under any Material Contract, (D) there are no events or conditions which constitute, or, after notice or lapse of time or both, will constitute a default on the part of a Seller or Subsidiary of a Seller, or to the Knowledge of Sellers, any counterparty under such Material Contract and (E) to the Knowledge of Sellers, Sellers and their Subsidiaries have not received any notice from any Person that such Person intends to terminate, not renew, breach or materially amend the terms of any Material Contract, except in each case of clauses (A) through (E), as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Entities or the Acquired Assets and the Assumed Liabilities, taken as a whole. True, complete and correct copies of all Material Contracts (together with all modifications, schedules or supplements thereto) have been made available to Purchaser by the Sellers prior to the date hereof.

3.11 Intellectual Property.

(a) Schedule 3.11(a)(i) sets forth a true, complete and correct list (including the owner and jurisdiction) of all issued patents, trademark and service mark registrations, copyright registrations, and domain name registrations and pending patent, trademark and service mark applications included in the Owned Intellectual Property ("Registered Intellectual Property") and Schedule 3.11(a)(ii) sets forth a true, complete and correct list of all material proprietary Software included in the Owned Intellectual Property.

(b) A Seller or one of its Subsidiaries solely and exclusively owns, free and clear of all Encumbrances other than Permitted Encumbrances, the Owned Intellectual Property. To the Knowledge of Seller, each item of Registered Intellectual Property is subsisting, valid and enforceable.

(c) The Owned Intellectual Property and the Intellectual Property licensed pursuant to the Inbound IP Licenses constitute all Intellectual Property reasonably necessary for

the conduct of the business of the Seller and their Subsidiaries as currently conducted, and the Purchaser will own or have a valid and enforceable license to all Intellectual Property reasonably necessary for the conduct of such business following the Closing in the same manner it was conducted as of the Closing.

(d) The consummation of the Transactions will not alter, encumber, impair or extinguish any Owned Intellectual Property and no Contract to which the Sellers or their Subsidiaries are party or by which a Seller or a Subsidiary of a Seller is bound in connection with the Acquired Assets would, upon Closing, grant or purport to grant to any Person any license, covenant not to sue, or other rights related to the Owned Intellectual Property (other than the Acquired Entities).

(e) The conduct of the business of the Sellers and their Subsidiaries as currently conducted does not infringe upon, misappropriate or otherwise violate and, in the three (3) years preceding the date hereof has not infringed upon, misappropriated or otherwise violated, the Intellectual Property rights of any Person. No claim or litigation regarding any of the foregoing or challenging the legality, validity, enforceability, use or ownership of any Owned Intellectual Property is pending or threatened in writing and, to the Knowledge of Seller, no Person is infringing upon, misappropriating or otherwise violating the Owned Intellectual Property.

(f) Each Seller and each Subsidiary of a Seller have taken commercially reasonable actions to maintain, enforce and protect the Owned Intellectual Property, including protecting the confidentiality of all Owned Intellectual Property the value of which is contingent upon maintaining the confidentiality thereof. Each current and former employee and contractor of the Sellers and their Subsidiaries who developed, invented or contributed to any Owned Intellectual Property has executed a written agreement assigning all rights in and to such Owned Intellectual Property to a Seller or its Subsidiaries, except where such rights automatically vested in Seller or one of its Subsidiaries by operation of law.

(g) The manner in which any Open Source Software is incorporated into, linked to or called by, or otherwise combined or distributed with any Owned Intellectual Property does not, according to the terms of the license applicable to such Open Source Software, obligate any Seller or its Subsidiaries to: (i) disclose, make available, offer or deliver all or any portion of any source code of any such software product or service or any component thereof to any third party, other than the applicable Open Source Software, or (ii) create obligations to grant, or purport to grant, to any third party any rights or immunities under any Owned Intellectual Property (including any agreement not to assert patents), or impose any present economic limitations on any commercial exploitation thereof. None of the Sellers or their Subsidiaries has any duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the source code of any Owned Intellectual Property to any escrow agent or other Person.

(h) No (i) government funding or (ii) facilities of a university, college, other education institution or research center was used in the development of the Owned Intellectual Property.

3.12 Information Technology and Data Matters.

(a) The Company Systems are in good working order and operate and perform in a manner that permits the operation of the business of the Sellers and their Subsidiaries as currently conducted in all material respects. Within the three (3) years preceding the date hereof, the Sellers and their Subsidiaries have used commercially reasonable efforts to protect the confidentiality, integrity and security of the Company Systems and to prevent any theft, corruption, loss or unauthorized use, access, interruption, or modification of such Company Systems. Within the three (3) years preceding the date hereof, there has been no outage, substandard performance, theft, corruption, loss or unauthorized use, access, interruption or modification of the Company Systems that has caused any disruption in or to the Sellers' and their Subsidiaries' business and that has not been remediated in all material respects.

(b) Sellers (i) maintain, and for the past three (3) years have maintained, commercially reasonable appropriate policies, procedures and rules regarding data privacy, protection and security consistent with all applicable Privacy Laws (the "Privacy Policies"), and (ii) have, for the past three (3) years preceding the date hereof, complied, and are currently in compliance with, all Privacy Laws, the Privacy Policies, and the terms of all Contracts concerning the Processing of Personal Information, in each case of (i) and (ii) except as would not, individually or in the aggregate, reasonably be expected to be material and adverse to any Acquired Entity or the Acquired Assets and the Assumed Liabilities, taken as a whole. Within the three (3) years preceding the date hereof, no Seller or any Subsidiary of a Seller has experienced any material incident in which Personal Information was exfiltrated, compromised, stolen or accessed in an unauthorized manner that required notification to affected individuals under Privacy Laws.

(c) The execution, delivery and performance of this Agreement and the purchase of the Acquired Assets and Acquired Entities will not violate any Privacy Laws, and immediately following the Closing, Purchaser will continue to have the right to use Personal Information used by the Sellers in connection with the Acquired Assets and Acquired Entities on the same terms and conditions as the Sellers and their Subsidiaries enjoyed immediately prior to the Closing.

(d) No Seller, nor any Subsidiary of any Seller, has for the past three (3) years received any (i) written notices from any Governmental Body alleging non-compliance with applicable Privacy Laws, (ii) written complaints from any person, alleging that Sellers' Processing of Personal Information is in violation in any material respect of applicable Privacy Laws, or (iii) written notices of any claims or legal actions brought by, or on behalf of, any person in respect of any actual or alleged breach by any Seller of applicable Privacy Laws.

3.13 Tax Matters. Except as set forth on Schedule 3.13:

(a) All income and other material Tax Returns required to be filed by or with respect to (i) any of the Acquired Assets or Assumed Liabilities or (ii) any Acquired Entity have, in each case, been timely and properly filed with the appropriate Taxing Authorities (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects. All material amounts of Taxes due from, or with respect to,(i) any of the Acquired Assets

or Assumed Liabilities or(ii) any Acquired Entity, whether or not shown on any Tax Return, have, in each case, been timely paid in full, except for Taxes being contested in good faith by appropriate proceedings that have been adequately reserved for by Sellers in accordance with GAAP.

(b) Each Seller, and each Subsidiary of any Seller, has duly and timely withheld from employee salaries, wages, and other compensation and have paid over to the appropriate Taxing Authorities all material amounts required to be so withheld and paid over for all periods under all applicable Laws.

(c) There are no Encumbrances for Taxes on any of the Acquired Assets or any of the assets of any of the Acquired Entities, other than Permitted Encumbrances.

(d) No Seller, or Subsidiary of any Seller, has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to an assessment or deficiency for income or a material amount of other Taxes (other than pursuant to extensions of time to file Tax Returns obtained in the Ordinary Course).

(e) All material deficiencies asserted or assessments made by the IRS or any other Taxing Authority (i) with respect to the Acquired Entities and (ii) with respect to the Acquired Assets or Assumed Liabilities, have, in each case, been fully and timely paid, settled or withdrawn, and, to the Knowledge of Sellers, there are no other audits, investigations, disputes, notices of deficiency or other Actions or proceedings by any Taxing Authority pending or threatened in writing with respect to (i) the Acquired Entities or (ii) the Acquired Assets or Assumed Liabilities.

(f) The Acquired Entities have withheld all material amounts of Taxes as are required to be withheld under applicable Law and has timely paid or remitted all such Taxes to the appropriate Governmental Body.

(g) No written notice has been received from any Governmental Body in a jurisdiction in which any Acquired Entity does not currently file a given type of Tax Return that such Acquired Entity is or may be subject any such Tax or is or may be required to file that type of Tax Return in such jurisdiction.

(h) Cyxtera Communications Canada, ULC, and Cyxtera Canada TRS, ULC are residents of Canada for the purposes of the ITA, and no other Seller is disposing of "taxable Canadian property" within the meaning of the ITA pursuant to this Agreement.

(i) Each Acquired Entity has been resident at all times since its incorporation solely in the jurisdiction of its incorporation and does not have a permanent establishment in, and is not and has never been treated for any Tax purpose as resident (or dual-resident) in, any other jurisdiction(s).

(j) Each Acquired Entity has complied in all material respects with all Laws relevant to VAT and GST/HST and, in each case, has made and obtained correct and up to date records and invoices and other documents appropriate or requisite for the purposes of all such Laws.

(k) Neither Purchaser nor any Acquired Entity will be required to include any material item of income in, or exclude any material deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of Tax accounting or use of an improper method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing Date; (ii) "closing agreements" (as described in Section 7121 of the Tax Code or any corresponding provision of state, local or foreign Tax Law) executed prior to the Closing Date; (iii) prepaid amounts or other deferred revenue items arising on or prior to the Closing Date outside the ordinary course of business; or (iv) any installment sale or open transaction disposition made on or prior to the Closing Date.

(l) The U.S. federal income Tax classification of each of the Acquired Entities is as set forth on Schedule 3.13(l).

The representations and warranties contained in Section 3.6, this Section 3.13 and Section 3.16 are the only representations and warranties being made with respect to Tax matters of Sellers or any of their Subsidiaries, and nothing in this Section 3.13 or otherwise in the Agreement shall be construed as a representation or warranty with respect to the amount, availability or usability of any net operating loss, capital loss, Tax basis or other income Tax asset or attribute of any Acquired Entity, Acquired Asset or Assumed Liability in any post-Closing taxable period.

3.14 Environmental Matters. Except as set forth on Schedule 3.14 or, as would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect, (a) Seller and its Subsidiaries are in compliance in all respects with all applicable Environmental Laws, which compliance includes possessing and complying with all Permits required by applicable Environmental Laws, (b) within the three (3) years preceding the date hereof Seller and its Subsidiaries have not received any written notice, and there are no Actions pending or, to the Knowledge of Seller, threatened in writing against Seller or any Subsidiary, regarding any violation or Liability pursuant to Environmental Laws, (c) to the Knowledge of Seller, there have been no releases of any Hazardous Material at the Leased Real Property or at Owned Real Property in a manner that requires remediation under Environmental Laws, (d) Sellers have furnished to Purchaser all material environmental site assessment reports prepared in the last three (3) years relating to the Leased Real Property or Owned Real Property that are in their possession and (e) the contemplated Transactions do not require any filing with a Governmental Body pursuant to the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K *et seq*.

3.15 Labor and Employment. Except as set forth on Schedule 3.15:

(a) Sellers are in compliance with all applicable Laws respecting employment practices and labor, including those related to wages and hours, vacation pay, collective bargaining, unemployment insurance, workers' compensation, language, immigration, harassment and discrimination, disability rights and benefits, human rights, affirmative action, accessibility, pay equity, and employee layoffs, except where the failure to be in compliance would not reasonably be expected to result in material Assumed Liability.

(b) There is no Action pending or, to the Knowledge of Seller, threatened in writing against any Seller or Subsidiary of a Seller alleging a violation of any labor or employment Law brought by any current employee of a Seller or a Subsidiary of a Seller that is before any

Governmental Body, except for such Actions (or threatened Actions) that, if adversely determined, would not, individually or in the aggregate, reasonably be expected to result in material Assumed Liability.

(c) Neither the Sellers nor any of their Subsidiaries are party to any collective bargaining agreement and, to the Knowledge of Seller, no employees of a Seller or a Subsidiary of a Seller are represented by any labor union with respect to their employment with the Seller or its Subsidiaries.

(d) To the Knowledge of Seller, no union organizing or decertification activities are underway, pending or threatened in writing with respect to any Business Employees.

(e) There is not presently pending, any material labor strike, slow-down, or work stoppage against the Sellers or any of their Subsidiaries.

(f) As of the date hereof, no collective bargaining agreement is currently being negotiated by the Sellers or any of their Subsidiaries.

(g) Schedule 3.15(g), sets forth, as of the date hereof, a list of each Business Employee indicating each employee's: (i) name or identification number; (ii) hire date; (iii) active or inactive status; (iv) title; (v) full time, part time or temporary status; (vi) work location; (vii) overtime exempt classification under applicable Laws; (viii) hourly rate of pay or base annual salary; (ix) bonus or commission potential; (x) employer and (xi) Employee Benefit Plan participation.

(h) The Sellers and their Subsidiaries are and during the past three (3) years have been in compliance with the WARN Act and have no material unsatisfied liabilities thereunder. Sellers have reasonably investigated all sexual harassment allegations of, or against any current and former Business Employees the past three (3) years. With respect to each such allegation with potential merit, Sellers have taken prompt corrective action that is reasonably calculated to prevent further discrimination and harassment and the Sellers do not reasonably expect to incur any material Assumed Liability with respect to any such allegations.

3.16 Employee Benefit Plans.

(a) Schedule 3.16(a) sets forth a true, complete and correct list of each material Employee Benefit Plan. For purposes of this Agreement, an "Employee Benefit Plan" means each employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and each other plan, program, policy, practice, agreement or arrangement (whether written or unwritten, registered or unregistered, funded or unfunded, insured or uninsured), including any deferred compensation, bonus or incentive compensation, equity or equity based compensation, pension, supplemental pension, retirement savings, retiree or post-employment benefits, health and welfare (including medical, drug, vision, dental, accidental death and dismemberment, critical illness, disability or life insurance coverage), severance or termination payment, retention payment, separation, change-of-control payment, fringe benefit (including employee assistance, employee loan, education assistance, vehicle, housing or other allowance or employee mortgage insurance) or similar benefit or compensation plan, program, policy, practice, agreement or arrangement, in each case, (i) that is maintained,

sponsored, administered or contributed or required to by Sellers or any of their respective Subsidiaries for employees or former employees of Sellers or any of their respective Subsidiaries, or (ii) with respect to which Sellers or any of their respective Subsidiaries has any current or contingent liability, but excluding any statutory plans that the Sellers or any of their respective Subsidiaries is required to participate in or comply with, including the Canada and Quebec Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation.

(b) With respect to each material Employee Benefit Plan, the Seller has made available to Purchaser, copies of, to the extent applicable, (i) the plan documents and related summaries and each trust, insurance, annuity or other funding Contract related thereto, (ii) the most recent financial statements and actuarial or other valuation reports prepared with respect thereto, (iii) copies of material notices, letters or other non-routine correspondence from any Governmental Body within the last year, and (iv) all other material documentation pursuant to which such Employee Benefit Plan is currently administered or funded, including the use of the funds held under such Employee Benefit Plan.

(c) None of the Sellers, any of their respective Subsidiaries or, to the Knowledge of Seller, any other Person has engaged in a prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Tax Code, with respect to any Employee Benefit Plan that would result in material Assumed Liability.

(d) Neither the execution and delivery of this Agreement nor the consummation of any of the other Transactions, either alone or together with another event, will (A) result in any payment (including severance, unemployment compensation, golden parachute, bonuses, change-in-control, retention, forgiveness of Indebtedness or otherwise) becoming due under any Employee Benefit Plan, whether or not such payment is contingent, (B) increase any benefits or compensation otherwise payable under any Employee Benefit Plan or other arrangement, (C) result in the acceleration of the time of payment, vesting or funding of any benefits or compensation, or (D) would result in the payment of any "excess parachute payments" within the meaning of Section 280G of the Tax Code. Neither the Seller nor any of its Affiliates has any obligation to gross up any current or former employee or individual service provider for any Taxes under Sections 409A or 4999 of the Tax Code.

(e) Each Employee Benefit Plan intended to qualify for Tax-preferred or Tax-exempt status (including under Section 401(a) of the Tax Code and the ITA) meets such requirements in all material respects (and, if applicable, has received a favorable determination letter, or is the subject of a favorable opinion letter, from the IRS as to its qualified status under the Tax Code) and, to the Knowledge of Seller, no fact or event has occurred that would reasonably be expected to adversely affect the qualified status of any such Employee Benefit Plan. With respect to each Employee Benefit Plan, all contributions, distributions, reimbursements and premium payments that are due have been made. Neither Sellers nor any of their respective Subsidiaries has any obligation to provide any retiree or post-employment health or welfare benefits to any Person, except for continuation of health coverage under COBRA. The Sellers and their respective Subsidiaries have complied, and are in compliance with, the requirements of Section 4980B of the Tax Code, except as would not, individually or in the aggregate, be reasonably expected to result in a material Assumed Liability.

(f) Except as would not, individually or in the aggregate, be reasonably expected to result in material Assumed Liability:

(i) Each Employee Benefit Plan has been maintained, funded, operated, and administered in compliance with its terms and the requirements of any applicable Law, including ERISA and the Tax Code, and including with respect to the proper inclusion or exclusion of employees as participants in such Employee Benefit Plan; no breach of fiduciary duty (as determined under ERISA or common law) by the Sellers, or, to the Knowledge of Seller, any other Person has occurred with respect to any Employee Benefit Plan; neither Sellers nor any of their respective Subsidiaries have any current or contingent liability under or relating to any "pension plan" (as defined in Section 3(2) of ERISA) subject to Section 412 of the Tax Code or Title IV or Section 302 of ERISA; neither Sellers nor any of their respective Subsidiaries contribute to, have any obligation to contribute to, or have any current or contingent liability under or with respect to any "multiemployer plan" (as defined in Section 3(37) of ERISA); and no Employee Benefit Plan is (i) subject to provincial or federal pension standards legislation in Canada, (ii) a "retirement compensation arrangement" (as such term is defined in subsection 248(1) of the ITA), (iii) is a "salary deferral arrangement" (as such term is defined in subsection 248(1) of ITA), (iv) an "employee life and health trust" (as such term is defined in subsection 248(1) of the ITA); or, (v) a "health and welfare trust" (within the meaning of Canada Revenue Agency Income Tax Folio S2-F1-C1).

(ii) There is no pending or, to the Knowledge of Seller, threatened Action relating to any Employee Benefit Plan, and, to the Knowledge of the Seller, no circumstances exist that would reasonably be expected to lead to a claim or Action.

(iii) To the Knowledge of Seller, no Business Employee has been improperly included in or excluded from any Employee Benefit Plan.

3.17 Customers and Suppliers.

(a) Schedule 3.17(a) contains a complete and accurate list of the ten (10) largest customers of the Sellers and their Subsidiaries, taken as a whole (measured by aggregate billings) during the period from the end of the second fiscal quarter of fiscal year 2022 through the third fiscal quarter of fiscal year 2023 (the "Material Customers"). Except as disclosed in Schedule 3.17(a), since the date of the Latest Balance Sheet, (i) no Material Customer has materially reduced, cancelled or terminated (except for expiration of Contracts pursuant to their terms) its business relationship with any Seller or Subsidiary of a Seller, as applicable, or has notified Seller or such Subsidiary, as applicable, in writing, or to the Knowledge of Seller, orally, of any intent to do so and (ii) there has been no material dispute or controversy or, to the Knowledge of Seller, threatened material dispute or controversy, between any Seller or Subsidiary of a Seller, on one hand, and any Material Customer, on the other hand.

(b) Schedule 3.17(b) contains a complete and accurate list of the ten (10) largest suppliers from which the Sellers and their Subsidiaries, taken as a whole purchased materials, supplies, services or other goods (measured by dollar volume of purchases from such suppliers) during the twelve (12) months ended May 16, 2023 (such suppliers collectively referred to as

"Material Suppliers"), and the amount for which each such Material Supplier invoiced the Sellers and their Subsidiaries during such period. Since the Latest Balance Sheet, no Material Supplier has materially increased the pricing, or adversely altered other terms of its business with the Sellers and their Subsidiaries, or, to the Knowledge of Sellers, indicated an intention to terminate, cancel, materially reduce the volume, materially reduce its business, materially increase its pricing, or adversely alter other terms of its business with any of the Sellers or their Subsidiaries.

3.18 Insurance. Schedule 3.18 sets forth a description of policies of fire and casualty, general liability, director and officer liability, and all other forms of material insurance maintained by or on behalf of the Sellers and their Subsidiaries (the "Business Insurance Policies"), including with respect to each such policy the first named insured, the policy/bond number, the insurer(s), the material limits, the deductibles and the term thereof. All such Business Insurance Policies (i) collectively provide reasonably adequate coverage against all risks customarily insured against by companies in similar lines of business as the Sellers and their Subsidiaries and (ii) are in full force and effect. All premiums past due have been paid and no outstanding notice of default, cancellation, modification or termination has been received by or on behalf of the Sellers or any of their Subsidiaries with respect to any such Business Insurance Policies (except notices in connection with scheduled renewals) and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default by any insured thereunder. There have been no material claims by the Sellers or any of their Subsidiaries under any such policy as to which coverage has been denied or disputed by the underwriters of such policy. Prior to the date hereof, the Sellers have made available to Purchaser true, complete and correct (a) loss-runs for the last three (3) years in respect of the Sellers and their Subsidiaries, including the remaining deductible and retention amounts and coverage limits, under the Business Insurance Policies and (b) copies of the Business Insurance Policies.

3.19 Transactions with Related Parties. Except for any other Contract entered into by the Seller Parties in connection with the Bankruptcy Cases, in connection with employee compensation or employee arrangements in the Ordinary Course (including participation in Employee Benefit Plans) or as set forth in Schedule 3.19, there are no Contracts, ongoing transactions or business relationships involving payments, Liabilities, or assets, in each case, having value in excess of $120,000, between a Seller or any of its Subsidiaries, on the one hand, and any current or former executive officer, director, employee or Affiliate of a Seller or any of its Subsidiaries, or any member of the immediate family of any such officer, director, employee or Affiliate, on the other hand.

3.20 Brokers. Except for Guggenheim Securities, LLC ("Guggenheim Securities") or as set forth on Schedule 3.20, the fees and expenses of which will be borne solely by the Sellers, no broker, finder, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of a Seller or any of its Subsidiaries.

3.21 Letters of Credit, Surety Bonds. Schedule 3.21 sets forth a true, complete and correct list of all letters of credit, surety bonds, and similar obligations of the Sellers and their Subsidiaries. As of the date hereof, no draw or request for payment or reimbursement has been made with respect to any letter of credit, surety bond, or similar obligation.

3.22 Critical Technologies. No Acquired Entity produces, designs, tests, manufactures, fabricates, or develops any critical technologies as that term is defined in 31 C.F.R. § 800.215.

3.23 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or in the certificate delivered pursuant to Section 2.4(l) (the "Express Representations") (it being understood that Purchaser has relied only on such Express Representations and warranties), Purchaser acknowledges and agrees that no Seller nor any other Person on behalf of any Seller makes, and neither Purchaser has relied on, is relying on, or will rely on the accuracy or completeness of any express or implied representation or warranty with respect to any Seller, any Subsidiary of a Seller, the Acquired Assets, or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, Projections, forecasts or other material of any nature made available or provided by any Person (including in any presentations or other materials prepared by Guggenheim Securities or AlixPartners) (the "Information Presentation") or in that certain "Project Cadillac" datasite administered by Venue (the "Dataroom") or elsewhere to Purchaser or any of its Affiliates or Advisors on behalf of Sellers or any of their Affiliates or Advisors. Without limiting the foregoing, no Seller nor any of its Advisors or any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including the Information Presentation, the Projections, any information, statements, disclosures, documents, Projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise in expectation of the Transactions or any discussions with respect to any of the foregoing information. Notwithstanding the foregoing, nothing in this Agreement shall limit any claim for Fraud.

3.24 No Outside Reliance. Notwithstanding anything contained in this Article III or any other provision of this Agreement to the contrary, each of the Sellers acknowledges and agrees, on its own behalf and on behalf of its Subsidiaries, that the representations and warranties expressly contained in Article IV (as qualified in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or in the officer's certificate delivered by Purchaser pursuant to Section 2.5(k) are the sole and exclusive representations, warranties and statements of any kind made to the Sellers and on which the Sellers may rely in connection with the Transactions.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as follows.

4.1 Organization and Qualification. Purchaser is an entity duly formed or organized (as applicable), validly existing and in good standing under the Laws of the jurisdiction of its formation or organization (as applicable) and has all requisite organizational power and authority necessary to own or lease its assets and properties and to operate its business as it is now being conducted, except (other than with respect to Purchaser's due formation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have a material adverse

effect on Purchaser's ability to consummate the Transactions. Purchaser is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) under the Laws of each jurisdiction in which the nature of its business or the character or location of the properties owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the Transactions.

4.2 Authorization of Agreement. Purchaser has all necessary organizational power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by Purchaser of the Transactions, subject to requisite Bankruptcy Court approvals and CCAA Orders being granted (each as described in this Agreement), have been duly authorized by all requisite corporate or similar organizational action and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals and CCAA Orders being granted (each as described in this Agreement), this Agreement has been duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery hereof by the other Parties, constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

(a) Assuming that (i) the Confirmation Order, and all other requisite Bankruptcy Court approvals and CCAA Orders are obtained (each as described in this Agreement), (ii) the notices, authorizations, approvals, Orders, Permits or consents set forth on Schedule 4.3(a) are made, given or obtained (as applicable), (iii) the requirements of the HSR Act are complied with, and (iv) any filings required by any applicable federal or state securities or "blue sky" Laws are made, the execution and delivery by Purchaser of this Agreement, the consummation by Purchaser of the Transactions, and the performance and compliance by Purchaser with any of the terms or provisions hereof, do not and will not (A) conflict with or violate any provision of Purchaser's Organizational Documents, (B) violate any Law or Order applicable to Purchaser, (C) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any loan or credit agreement or other material Contract to which Purchaser is a party or accelerate Purchaser's obligations under any such Contract, or (D) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Purchaser or any of its Subsidiaries, except, in the case of clauses (B) through (D), as would not, individually or in the aggregate, reasonably be expected to materially affect the ability of the Purchaser to consummate the Transactions.

(b) Except as set forth on Schedule 4.3(a), Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, Permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the Transactions, except (i) any filings

required to be made under the HSR Act, (ii) such filings as may be required by any applicable federal or state securities or "blue sky" Laws, or (iii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially impair, alter or delay the ability of Purchaser to consummate the Transactions.

4.4 Financing.

(a) As of the date of this Agreement, Purchaser has received and accepted, and delivered to CTI a true, complete and correct copy of, an executed equity commitment letter dated as of the date hereof, among Purchaser and the other respective parties thereto (the "Investors") (together with all annexes, schedules and exhibits thereto, the "Equity Commitment Letter") relating to the commitment to provide Purchaser the amount of equity financing set forth therein (the "Equity Financing").

(b) As of the date of this Agreement, except as set forth in the Equity Commitment Letter, there are no conditions precedent to the obligations of the Investors to provide the Equity Financing or any contingencies that would permit the Investors to reduce the total amount of the Equity Financing below the Required Amount (as defined below). Subject to the satisfaction of the conditions set forth in Sections 7.1 and 7.2, as of the date of this Agreement, Purchaser does not have any reason to believe that it will be unable to satisfy on a timely basis any term or condition to Closing to be satisfied by it in the Equity Commitment Letter or that sufficient funds in an aggregate amount necessary to pay the Required Amount will not be made available to Purchaser, on the Closing Date.

(c) As of the date of this Agreement, the Equity Financing, to the extent funded in accordance with the Equity Commitment Letter, shall provide Purchaser with immediately available cash on the Closing Date, sufficient to pay the Closing Date Payment, and all related expenses required to be paid by Purchaser hereunder (the Closing Date Payment, and all such related expenses, the "Required Amount").

(d) As of the date of this Agreement, the Equity Commitment Letter is the legal, valid, binding and enforceable obligation of Purchaser and, each other party thereto, subject in each case to the Enforceability Exceptions, and is in full force and effect. As of the date of this Agreement, no event has occurred that, with or without notice, lapse of time, or both, would reasonably be expected to constitute a material default or breach or failure to satisfy a condition precedent on the part of Purchaser under the terms and conditions of such Equity Commitment Letter. As of the date of this Agreement, the Equity Commitment Letter has not been withdrawn, rescinded or terminated or otherwise amended or modified in any respect that would be material and adverse to the Sellers, and no such amendment or modification is contemplated. As of the date of this Agreement, no counterparty to the Equity Commitment Letter has notified Purchaser of its intention to terminate the Equity Commitment Letter or not to provide such Equity Financing.

(e) Purchaser expressly acknowledges and agrees that the receipt or availability of any funds or financing (including, for the avoidance of doubt, the Equity Financing) by Purchaser is not a condition to Closing or any of Purchaser's obligations hereunder.

4.5 Security Law Matters. Purchaser is acquiring the capital stock or other Equity Interests of the Acquired Entities for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities Laws. Purchaser is an "accredited investor" as that term is defined in Regulation D promulgated under the Securities Act.

4.6 Brokers. Except for Moelis & Company LLC, all of whose fees and expenses will be borne solely by Purchaser, there is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that is entitled to any fee or commission in connection with the Transactions.

4.7 No Litigation. There are no Actions pending or, to Purchaser's knowledge, threatened against or affecting Purchaser that will or would be reasonably likely to materially and adversely affect Purchaser's performance of its obligations under this Agreement or the consummation of the Transactions.

4.8 Certain Arrangements. As of the date hereof, there are no Contracts, undertakings, commitments or obligations, whether written or oral, between any member of the Purchaser Group, on the one hand, any member of the management of Seller or its board of directors (or applicable governing body of any Affiliate of Seller), any holder of equity or debt securities of Seller, or any lender of Seller or any Affiliate of Seller (and expressly excluding any landlords under Leases), in each case, in its capacity as such, on the other hand, (a) relating in any way to the acquisition of the Acquired Assets or the Transactions or (b) that would be reasonably likely to prevent, restrict, impede or affect adversely the ability of Seller or any of its Affiliates to entertain, negotiate or participate in any such transactions.

4.9 Solvency. Assuming that the representations and warranties of the Sellers contained in this Agreement are true and correct in all respects as of the Closing and Sellers comply with all of their covenants and agreements hereunder, Purchaser is, and immediately after giving effect to the Closing, Purchaser and the Acquired Entities, taken as a whole, will be, solvent and will: (a) be able to pay their debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay their debt (including a reasonable estimate of the amount of all contingent Liabilities) and (c) have adequate capital to carry on their business. No transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay or defraud either present or future creditors of Purchaser or any of the Acquired Entities. In connection with the Transactions, Purchaser has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

4.10 Investigation. Purchaser acknowledges, covenants and agrees that it is relying on its own independent investigation and analysis in entering into this Agreement and consummating the Transactions. Purchaser is knowledgeable about the industries in which the Acquired Entities operate and is capable of evaluating the merits and risks of the Transactions and is able to bear the substantial economic risk of such investment for an indefinite period of time. Subject to Section 6.2, Purchaser has been afforded access to the books and records, facilities and personnel of the Acquired Entities for purposes of conducting a due diligence investigation and has conducted a due diligence investigation of the Acquired Entities. Notwithstanding the foregoing, nothing in this Agreement shall limit any claim for Fraud.

## ARTICLE V
## BANKRUPTCY COURT MATTERS

5.1 Bankruptcy Actions.

(a) Sellers shall schedule a hearing on November 16, 2023, at 2:00 p.m., prevailing Eastern Time or such other date as may be scheduled by the Bankruptcy Court and mutually agreed to in writing by Sellers and Purchaser (email being sufficient) to obtain entry of the Confirmation Order.

(b) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, Sellers shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Confirmation Order, including filing the Confirmation Brief.

(c) Sellers shall use reasonable best efforts to: (i) facilitate the solicitation, confirmation, and consummation of the Plan and the transactions contemplated hereby, (ii) obtain entry of the Confirmation Order, and (iii) consummate the Plan.

(d) Purchaser shall take such actions as are reasonably requested by Seller to assist in obtaining the Bankruptcy Court's entry of Confirmation Order and any other Order that Purchaser reasonably determines is necessary in connection with the Transactions, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court for the purposes of, among other things, providing necessary assurances of performance by Purchaser under this Agreement, and demonstrating that Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code, as well as demonstrating Purchaser's ability to pay and perform or otherwise satisfy any Assumed Liabilities following the Closing; provided, however, that nothing in this Agreement shall require either Purchaser or its Affiliates to give testimony to or submit any pleading, affidavit or information to the Bankruptcy Court, the CCAA Court, or any Person that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court, the CCAA Court or its stakeholders.

(e) The Foreign Representative and Canadian Sellers shall promptly file with the CCAA Court an application in the CCAA Proceeding seeking the granting of the CCAA Orders within five (5) Business Days following approval of the Confirmation Order by the Bankruptcy Court.

(f) Each Party shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the Transactions and (ii) keep the other reasonably apprised of the status of material matters related to the Agreement, including, upon reasonable request, promptly furnishing the other with copies of notices or other communications received by a Seller from the Bankruptcy Court with respect to the Transactions.

(g) Sellers shall not voluntarily pursue or seek, or fail to use commercially reasonable efforts to oppose any third party in pursuing or seeking, a conversion of the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code, the appointment of a trustee under Chapter 11 or Chapter 7 of the Bankruptcy Code or the appointment of an examiner with expanded powers.

(h) Sellers shall cooperate with Purchaser concerning the Confirmation Order and any other Orders (whether of the Bankruptcy Court, CCAA Court or otherwise) relating to the Transactions and the bankruptcy or other insolvency proceedings in connection therewith. Sellers shall provide draft copies to Purchaser of all applications, pleadings, notices, proposed Orders and other documents (including the Confirmation Brief, Sale Election Notice and the Stalking Horse Notice) relating to this Agreement or the Transactions no less than three (3) days, or as soon as reasonably practicable thereafter, prior to the proposed filing date so as to permit Purchaser sufficient time to review and comment on such drafts, and with respect to all provisions of the foregoing that relate to the Purchaser, this Agreement or the Transactions, such applications, pleadings, notices and proposed Orders shall be in form and substance reasonably acceptable to Purchaser.

(i) Promptly upon execution of this Agreement but in any event, not later than the Sale Transaction Notice Deadline (as provided in the Disclosure Statement Order), the Sellers shall prepare and file a notice electing to pursue a Sale Transaction (the "Sale Election Notice") in accordance with the provisions of the Order approving the Disclosure Statement [Docket No. 551] (as may be amended from time to time, the "Disclosure Statement Order").

(j) Promptly upon execution of this Agreement but in any event, not more than two (2) Business Days thereafter, the Sellers shall prepare and file a notice and proposed form of order designating Purchaser as the Stalking Horse Bidder (as such term is defined in the Bidding Procedures Order) (together, the "Stalking Horse Notice") in accordance with the Bidding Procedures Order, and which shall disclose the Expense Reimbursement and Breakup Fee.

(k) Promptly upon execution of this Agreement but in any event, not more than three (3) Business Days thereafter, the Sellers shall prepare and file (i) an amended Plan, in form and substance acceptable to the Purchaser (with respect to provisions that relate to or affect Purchaser, this Agreement, or the Transactions), incorporating the Transactions and the provisions necessary in the Plan to authorize and consummate the Transactions under the Plan, (ii) such amended notice and solicitation materials as the Sellers deem necessary, in consultation with Purchaser, to provide adequate notice to holders of claims against and interests in the Sellers or the Debtors' estates.

(l) Not later than the Confirmation Brief and Confirmation Objection Reply Deadline (as provided in the Disclosure Statement Order), the Sellers shall file a memorandum seeking confirmation of and providing legal support for entry of the Confirmation Order and confirmation of the Plan (a "Confirmation Brief").

(m) The Sellers agree that the Confirmation Order, Sale Election Notice and Stalking Horse Notice shall be in form and substance satisfactory to the Purchaser with respect to all provisions of the foregoing that relate to or affect Purchaser, this Agreement, or the Transactions, including any amendments thereto, whether before or after such documents and pleadings have been filed with or approved by the Bankruptcy Court.

(n) The Sellers agree that, as of the Sale Transaction Notice Deadline, the Auction has been closed, and the Sellers shall not solicit bids or alternative restructuring proposals, or ask the Bankruptcy Court to consider any such bids or alternative restructuring proposals.

5.2 Cure Costs. Subject to entry of the Confirmation Order and the effectiveness of the Plan, the Sellers shall, on or prior to the Closing (or, in the case of any Contract that is to be assigned following the Closing pursuant to Section 1.5, on or prior to the date of such assignment), pay the Cure Costs and cure any and all other defaults and breaches under the Assigned Contracts so that such Contracts may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of sections 365 and 1123(b)(2) of the Bankruptcy Code and this Agreement. Sellers shall file such motions or pleadings, and provide such notices, as may be appropriate or necessary to assume and assign the Assigned Contracts and to determine the amount of any Cure Costs.

5.3 Approval. Sellers' obligations under this Agreement and in connection with the Transactions are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Confirmation Order) and CCAA Court (including granting of the CCAA Orders). Nothing in this Agreement shall require Sellers or their respective Affiliates to give testimony to or submit a motion to the Bankruptcy Court that is untruthful.

5.4 Avoidance Actions. The Plan shall provide that all Avoidance Actions shall be cancelled and extinguished on the Effective Date of the Plan and no Seller or any Affiliates thereof shall pursue or bring any claim or Action with respect to any Avoidance Action.

## ARTICLE VI
## COVENANTS AND AGREEMENTS

6.1 Conduct of the Business of Sellers.

(a) Except as (i) required by applicable Law, Order, or a Governmental Body, (ii) required or restricted by the terms of the DIP Facility (as defined in the Final DIP Order), (iii) expressly required by this Agreement, or (iv) set forth in Schedule 6.1(a), during the period from the date of this Agreement until the Closing Date or the earlier termination of this Agreement in accordance with Article VIII, each Seller shall, and shall cause each of its Subsidiaries to, (A) conduct its business in the Ordinary Course and (Y) use their respective commercially reasonable efforts to (1) preserve intact the present business operations, organization and goodwill of its business, (2) preserve and maintain satisfactory relationships with material licensors, licensees, contractors, distributors, consultants, vendors, suppliers and others having business relationships with the Sellers or any of their Subsidiaries in connection with the operation of its business, (3) keep available the services of its officers and employees in the Ordinary Course, (4) pay all of its undisputed post-petition obligations in the Ordinary Course and (5) continue to operate its business and Acquired Assets in all material respects in compliance with all Laws applicable to such business, the Sellers and their respective Subsidiaries.

(b) Without limiting the generality of the foregoing, except as (i) required by applicable Law, Order, or a Governmental Body, (ii) required or restricted by the terms of the DIP Facility, or (iii) set forth in Schedule 6.1(a), during the period from the date of this Agreement until the Closing Date or the earlier termination of this Agreement in accordance with Article VIII, each Seller shall not, and shall not permit any of its Subsidiaries to, take any of the following actions without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed, other than in the case of any of the following matters that would be

included in the nature and scope of the Fundamental Representations, each of which shall be in the sole discretion of Purchaser):

(i) (A) issue, sell, encumber or grant any shares of the capital stock or other equity or voting interests of a Seller or any of its Subsidiaries, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of such capital stock or other equity or voting interests, or any rights, warrants or options to purchase any shares of such capital stock or other equity or voting interests; (B) redeem, purchase or otherwise acquire any of the outstanding shares of capital stock or other equity or voting interests of a Seller or any of its Subsidiaries, or any rights, warrants or options to acquire any shares of such capital stock or other equity or voting interests, except in connection with any actions required by Section 6.20, (C) establish a record date for, declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of the capital stock or other equity or voting interests of a Seller or any of its Subsidiaries, except in connection with any actions required by Section 6.20, or (D) split, combine, subdivide or reclassify any shares of the capital stock or other equity or voting interests of a Seller or any of its Subsidiaries;

(ii) sell, divest, distribute, assign, license, transfer or lease to any Person, or otherwise dispose of, in a single transaction or series of related transactions, any of the Acquired Assets (other than Owned Intellectual Property) for consideration, individually or in the aggregate, in excess of $500,000, except dispositions of obsolete, surplus or worn out assets or assets that are no longer used; provided, however, that a Seller shall not, and shall not permit its Subsidiaries to, (i) construct, materially alter or destroy any material improvement on the Owned Real Property or Leased Real Property (including any Leasehold Improvement); (ii) sell, lease, sublease or license to any Person any of the Owned Real Property or Leased Real Property or (in each case) any portion thereof; (iii) enter into, materially amend or waive, extend, fail to exercise any renewal option under, or voluntarily terminate any Lease; or (iv) acquire any real property;

(iii) (x) incur or commit to incur any capital expenditure or authorization or commitment with respect thereto, or (y) delay or fail to make any capital expenditures, including for property, plant and Equipment, except for those (A) that are materially consistent with the Sellers' capital expenditure schedule set forth on Schedule 6.1(b)(iii), or (B) in the case of clause (x), otherwise in an aggregate amount for all such capital expenditures made pursuant to this clause (B) not to exceed $1,000,000 in the aggregate in any calendar year;

(iv) acquire or agree to acquire by merging or consolidating with, or invest in or purchase (by asset acquisition, equity purchase or similar transaction) any portion of the stock of, or other ownership interests in, or material portion of assets of, or by any other manner, any business or any Person;

(v) (A) amend, terminate (partially or completely), supplement, modify, renew or fail to exercise any renewal rights, waive any provision of, or accelerate any rights, benefits or obligations under, any Material Contract or Permit, except in the Ordinary Course or upon the expiration in accordance with its term; (B) enter into any

Contract that would be a Material Contract if in existence on the date hereof, except for in the Ordinary Course upon substantially the same terms as similar Material Contracts; or (C) enter into any Contract that includes a change of control, anti-assignment or similar provision that would require a Consent from, a material payment to or would give rise to any material rights (including termination rights) of the other party or parties thereto in connection with the consummation of the Transactions or any future change of control, in each case, including with respect to any Excluded Data Center Contracts;

(vi) sell, lease, mortgage, pledge, grant any Encumbrance (other than Permitted Encumbrances and Encumbrances to be removed by operation of the Confirmation Order) on or otherwise encumber or dispose of any of its properties or assets (including the Acquired Assets), other than (A) to secure Indebtedness and other obligations in existence at the date of this Agreement (and required to be so secured by their terms) or permitted under Section 6.1(b)(vii); provided, further, that any such Encumbrance will be extinguished by the Sellers in connection with the Closing; or (B) to a Seller or to a wholly owned Subsidiary of a Seller; provided that any such Encumbrance will be extinguished by the Sellers as of the Closing or transferred to the benefit of Purchaser;

(vii) (A) issue, incur, assume or otherwise become liable for (i) any indebtedness for borrowed money, (ii) any notes, mortgages, bonds, debentures or other debt securities or warrants or other rights to acquire any notes, mortgages, bonds, debentures or other debt securities of a Seller or any of its Subsidiaries, (iii) any amounts owing as deferred purchase price for property or services, including any capital leases, seller notes and "earn out" payments, or other contingent payment obligations, (iv) any guarantee of any of the foregoing obligations of another Person, or any "keep well" or other agreement to maintain any financial statement condition of another Person, (v) obligations under any letters of credit, surety bonds, bank guarantees, security or performance bonds or similar credit support instruments, overdraft facilities or cash management programs, and (vi) any interest rate swap, forward Contract, currency or other hedging arrangements, to the extent payable if terminated (collectively, "Indebtedness"), except (1) Indebtedness that will constitute Excluded Liabilities, and (2) letters of credit, surety bonds, bank guarantees, security or performance bonds or similar credit support instruments, overdraft facilities or cash management programs, in each case issued, made or entered into in the Ordinary Course, (B) enter into any swap or hedging transaction or other derivative agreements other than in the Ordinary Course or (C) make any loans, capital contributions or advances to, or investments in, any Person other than the advancement of expenses to employees in the Ordinary Course in accordance with existing policies of a Seller or its Subsidiaries;

(viii) except as required by the terms of an existing Employee Benefit Plan disclosed to Purchaser on Schedule 3.16(a), (A) enter into, adopt, establish, materially amend or terminate any material Employee Benefit Plan other than in the Ordinary Course, (B) grant to any current or former director, officer, employee or other individual service provider of a Seller or any of its Subsidiaries any increase in compensation or benefits other than in the Ordinary Course, (C) grant to any current or former director, officer, employee or other individual service provider of a Seller or any of its Subsidiaries any severance,

retention, change in control, termination or similar compensation or benefits, (D) grant or amend or modify any equity, equity-based or other incentive awards, (E) hire, appoint or promote any employee or terminate (other than for "cause") any employee other than in the Ordinary Course, or (F) take any action to increase or accelerate the vesting of, or payment of, any compensation or benefit under any Employee Benefit Plan;

(ix) waive, release, assign, pay, discharge, settle, satisfy or compromise any Action (including any pending or threatened Action) against a Seller or any of its Subsidiaries that would result in an Assumed Liability or any material restriction, or other material obligation, on the conduct of the business of a Seller and its Subsidiaries, from and after the Closing, or commence any such Action;

(x) make any material changes in financial accounting methods, principles or practices materially affecting the consolidated assets, Liabilities or results of operations of the Sellers and their Subsidiaries, except insofar as may be required (A) by GAAP (or any interpretation thereof), (B) by any applicable Law, including Regulation S-X under the Securities Act, or (C) by any Governmental Body or quasi-Governmental Body (including the Financial Accounting Standards Board or any similar organization);

(xi) amend a Seller's articles of incorporation or bylaws (or comparable Organizational Documents) or amend the Organizational Documents of any Subsidiary of a Seller;

(xii) sell, license, sublicense, abandon or permit to lapse, transfer or dispose of, create or incur any Encumbrance (other than any Permitted Encumbrance) on, or otherwise fail to take any action necessary to maintain, enforce or protect any Owned Intellectual Property (except for non-exclusive licenses granted in the Ordinary Course);

(xiii) amend in any material respect, cancel or terminate any material insurance policy naming a Seller or a Subsidiary of a Seller as an insured, a beneficiary or a loss payable payee without obtaining comparable substitute insurance coverage;

(xiv) (A) make, revoke or change any method of Tax accounting or material Tax election, (B) file any amended Tax Return with respect to material amounts of Taxes, (C) enter into any closing agreement with respect to Taxes or settle or compromise any Tax claim or assessment, (D) consent to any extension or waiver of the limitation period with respect to Taxes, or (E) initiate any voluntary Tax disclosure or request any Tax ruling, in each case, relating to, or otherwise affecting, any Acquired Entity, Acquired Asset, or Assumed Liability to the extent such action would reasonably be expected to have a non-*de-minimis* and adverse effect on Purchaser and its Affiliates (including, after the Closing, Acquired Entities);

(xv) transfer any (A) Liabilities or assets to any Acquired Entity or (B) Liabilities that would become Assumed Liabilities or assets out of an Acquired Entity, in either case, outside of the Ordinary Course;

(xvi) enter into a Contract with an Affiliate other than on arm's length terms;

(xvii) accelerate the collection of any accounts receivable or delay the payment of any accounts payable in relation to their applicable due dates, or otherwise fail to manage Working Capital in the Ordinary Course, in each case, in any material respect; or

(xviii) authorize, or commit or agree, in writing or otherwise, to take, any of the foregoing actions.

(c) For the avoidance of doubt, nothing contained in this Agreement shall be construed to give to Purchaser, directly or indirectly, rights to control or direct the operations of Sellers prior to the Closing, and nothing contained in this Agreement is intended to give a Seller, directly or indirectly, the right to control or direct Purchaser's or its Affiliates' operations.

6.2 Access to Information.

(a) From the date hereof until the Closing, Sellers will provide Purchaser (and its Designee) and its authorized Advisors and the Debt Financing Sources with reasonable access and upon reasonable advance notice and during regular business hours to the facilities, books and records, documents data, files, properties, personnel, and Advisors of Sellers and their Subsidiaries in order for Purchaser (and its Designee) and its authorized Advisors and the Debt Financing Sources to access such information regarding the Acquired Assets and Assumed Liabilities as is reasonably necessary in order to consummate the Transactions and to assess any amounts that are or may become payable in connection therewith; provided that (i) such access does not unreasonably interfere with the normal operations of Sellers or any of their Subsidiaries, (ii) such access will occur in such a manner as Sellers reasonably determines to be appropriate to protect the confidentiality of the Transactions and such books and records, (iii) all requests for access will be directed to Guggenheim Securities or such other Person(s) as Sellers may designate in writing from time to time, (iv) nothing herein will require Sellers or any of their Subsidiaries to provide access to, or to disclose any information to, Purchaser or any other Person if such access or disclosure (A) would reasonably cause significant competitive harm to Sellers or any of their Subsidiaries if the Transactions are not consummated, (B) would waive any legal privilege or (C) would be in violation of applicable Laws (including the HSR Act and Antitrust Laws) or the provisions of any Contract to which Sellers or any Acquired Entity is bound or would violate any fiduciary duty; provided that, in the case of this clause (iv), the Sellers and their respective Subsidiaries will use commercially reasonable efforts to provide a reasonable alternative means of accessing any such information in a manner that would not result in material competitive harm, the waiver of any legal privilege or violation of applicable Laws, the provisions of any agreement or any fiduciary duty; provided, further, that no such access shall be required in connection with an adversarial proceeding between Purchaser (or its Designee) or any of its Affiliates, on the one hand, and any Seller or any of its Affiliates, on the other hand, and (v) nothing herein will permit Purchaser (or its Designee) or its authorized Advisors to conduct any sampling or testing of environmental media or any other invasive investigation or assessment at any Leased Real Property or Owned Real Property of Sellers or the Acquired Entities, including of the type commonly known as a Phase II environmental site assessment; provided, however, that notwithstanding the foregoing, in the event any additional sampling or testing of environmental media or any other invasive investigation or assessment at any Leased Real Property or Owned Real Property of Sellers or the Acquired Entities is required by the Purchaser's Debt Financing

Sources providing the Debt Financing with respect to such Leased Real Property or Owned Real Property in connection with the Debt Financing, then the Sellers will not withhold, condition or delay consent in response to a written request of Purchaser in connection therewith.

(b) The information provided pursuant to this Section 6.2 will be governed by all the terms and conditions of the Confidentiality Agreement, which Confidentiality Agreement shall survive the execution of this Agreement notwithstanding anything to the contrary therein. Purchaser will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Advisors. Seller makes no representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and none of Purchaser or its Advisors may rely on the accuracy of any such information.

(c) From and after the Closing for a period of three (3) years following the Closing Date, Purchaser will provide Sellers and their Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda and other documents (for the purpose of examining and copying) relating to the Acquired Assets, the Acquired Entities, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities, in each case to the extent in Purchaser's possession or control, with respect to periods or occurrences prior to the Closing Date, and reasonable access, during normal business hours, and upon reasonable advance notice, to employees, officers, Advisors, accountants, offices and properties of Purchaser (including for the purpose of better understanding the books and records), as may be reasonably requested by a Seller in connection with the Bankruptcy Cases, the wind-down and liquidation of Sellers, the winddown, transfer or disposition of any Excluded Assets, and any other bona fide legal compliance, accounting or Tax purpose; provided that nothing herein will require Purchaser to provide access to, or to disclose any information to, Sellers if such access or disclosure (A) would waive any legal privilege or (B) would be in violation of applicable Laws (including the HSR Act and Antitrust Laws) or the provisions of any agreement to which Purchaser or any of its Subsidiaries or Affiliates is bound or would violate any fiduciary duty; provided that Purchaser and its Subsidiaries will use commercially reasonable efforts to provide a reasonable alternative means of accessing any such information in a manner that would not result in material competitive harm, the waiver of any legal privilege or violation of applicable Laws, the provisions of any agreement or any fiduciary duty; provided, further, that no such access shall be required in connection with an adversarial proceeding between Purchaser or any of its Affiliates, on the one hand, and any Seller or any of its Affiliates, on the other hand. Unless otherwise consented to in writing by Sellers, Purchaser will use commercially reasonable efforts, for a period of three years following the Closing Date, to not destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to Sellers such books and records or any portion thereof that Purchaser may intend to destroy, alter or dispose of. From and after the Closing, Purchaser will, and will cause its employees to, provide Sellers with reasonable assistance, support and cooperation with Sellers' wind-down and related activities (*e.g.*, helping to locate documents or information related to and assisting in preparation of Tax Returns or prosecution or processing of insurance/benefit claims or reconciliation of claims in the Bankruptcy Case) consistent with such employees responsibilities prior to the Closing.

(d) Except as otherwise permitted hereunder, Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier lessee, lessor, lender, licensee, licensor, distributor or noteholder of any Seller prior to the Closing with respect to any Seller, any of its Subsidiaries, any of their respective businesses or the Transactions, in each case, without the prior written consent of Sellers for each such consent with such consent not to be unreasonably withheld, conditioned or delayed; provided that Purchaser and Purchaser Group may, without such consent, (i) contact any landlords to negotiate the amendment, assignment or termination of any Lease, the purchase, directly or indirectly, of any real property leased pursuant to any Leases, or the financeability of such real property interests, (ii) contact officers, managers, directors and employees of any Seller or its Subsidiaries to discuss compensation, benefits and arrangements in order to facilitate a smooth transition and integration of such Persons post-Closing and (iii) contact any customer, supplier, distributor or other commercial relation of any Seller or its Subsidiaries in connection with any matter contemplated by Section 1.5, Section 6.18 or Section 6.19; provided that, in the case of each of the foregoing clauses (ii) and (iii), Purchaser shall provide CTI with reasonable prior written notice thereof and reasonably coordinate the foregoing with Sellers. The Parties shall also reasonably cooperate to make employees available for the matters contemplated by Section 6.3. In furtherance of the foregoing, Sellers shall assist Purchaser (or its Designee) in facilitating conversations with any officer, manager, director, employee, customer, supplier lessee, lessor, lender, licensee, licensor, distributor or noteholder of any Seller, in each case reasonably requested by Purchaser (or its Designee), prior to the Closing in accordance with this Section 6.2(d).

(e) From and after the Closing for a period of three (3) years following the Closing Date (or, if earlier, the closing of the Bankruptcy Case), Sellers will provide Purchaser (and its Designee) and its Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, and other documents relating to Sellers or their Subsidiaries (other than the Documents), in each case, to the extent in Seller's possession or control (for the purpose of examining and copying) relating to the Acquired Assets or the Assumed Liabilities with respect to periods or occurrences prior to the Closing Date as may be reasonably requested by Purchaser (or its Designee) in connection with a bona fide legal compliance, accounting or Tax purpose; provided that nothing herein will require Sellers to provide access to, or to disclose any information to, Purchaser (or its Designee) if such access or disclosure (A) would waive any legal privilege or (B) would be in violation of applicable Laws (including the HSR Act and Antitrust Laws) or the provisions of any agreement to which any Seller is bound or would violate any fiduciary duty; provided that Sellers and their Subsidiaries will use commercially reasonable efforts to provide a reasonable alternative means of accessing any such information in a manner that would not result in the waiver of any legal privilege or violation of applicable Laws, the provisions of any agreement or any fiduciary duty; provided, further, that no such access shall be required in connection with an adversarial proceeding between Purchaser (or its Designee) or any of its Affiliates, on the one hand, and any Seller or any of its Affiliates, on the other hand. Unless otherwise consented to in writing by Purchaser, Sellers will not, for a period of three (3) years following the Closing Date (or, if earlier, the closing of the Bankruptcy Case), destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to the Purchaser such books and records or any portion thereof that Sellers may intend to destroy, alter or dispose of.

(f) Neither of Section 6.2(c) or Section 6.2(e) shall apply with respect to Tax matters, which are the subject of Section 9.3.

6.3 Employee Matters.

(a) At least ten (10) Business Days prior to Closing, Purchaser shall extend to each Business Employee employed by Sellers a written offer of employment reviewed by Sellers, and which Sellers have had an opportunity to comment on, providing for a position that is the same or substantially similar to such employee's position immediately prior to the Closing (including, primary location of employment) and on the terms set forth in this Section 6.3 (or, in the case of any Business Employee employed by Sellers that is a party to an Acquired Seller Plan that is an existing employment agreement, including assumption of such employment agreement (provided any such employment agreements are set forth and identified on Schedule 6.3(a))) ("Transfer Offer") and that, if accepted, shall become effective immediately after the Closing. Business Employees who accept such Transfer Offers and begin employment with Purchaser, and Business Employees employed by the Acquired Entities as of the Closing Date, shall be collectively referred to herein as "Transferred Employees." Purchaser shall notify Sellers in a reasonable timeframe (but in any event within ten (10) Business Days of receiving a response from the applicable Business Employee and no later than one (1) Business Day prior to the Closing) with respect to whether each such Transfer Offer has been accepted or rejected. Nothing herein shall be construed as a representation or guarantee by any Seller or any of their respective Affiliates that any or all Business Employees employed by Sellers will accept the Transfer Offer, or that any Transferred Employee will continue in employment with Purchaser following the Closing for any period of time. Effective as of the Closing, each Transferred Employee previously employed by Sellers (other than the Acquired Entities) shall cease to be an employee of Sellers.

(b) For a period of one (1) year from and after the Closing Date, Purchaser shall provide each Transferred Employee, or cause each Transferred Employee to be provided, with, and each Transfer Offer shall include,: (i) a base compensation or wage rate, as applicable, that is no less than that provided to such Transferred Employee as of immediately prior to the Closing; (ii) short-term cash incentive opportunities that are substantially comparable in the aggregate in target dollar value to those provided to such Transferred Employee as of immediately prior to the Closing; and (iii) other employee benefits (excluding severance, change of control, key employee incentive, key employee retention, other retention or one-time bonus and equity-based incentive plans or arrangements) that are substantially comparable in the aggregate in dollar value to those provided to such Transferred Employees as of immediately prior to the Closing. For purposes of eligibility, vesting and determining level of benefits under the benefit plans and programs maintained by Purchaser or any of its Affiliates after the Closing Date (the "Purchaser Plans"), subject to the terms of any applicable Contracts and any required third-party consents, each Transferred Employee shall be credited with his or her years of service with Sellers (and any predecessor thereto) before the Closing Date, except to the extent such credit would result in a duplication of benefits. Prior to the Closing Date, the Sellers shall make available to Purchaser all data in Sellers' possession that is reasonably requested by Purchaser as necessary to administer each Acquired Seller Plan and, upon reasonable request from Purchaser, Seller shall request from Seller's agent any such information so requested by Purchaser that is not in Seller's possession.

(c) (i) Purchaser shall use commercially reasonable efforts to cause each Transferred Employee to be immediately eligible to participate, without any waiting time, in the Purchaser Plans; (ii) for purposes of each Purchaser Plan providing health or welfare benefits, Purchaser shall cause all pre-existing condition exclusions and actively-at-work requirements of such Purchaser Plan to be waived for such Transferred Employee and his or her covered dependents (unless such exclusions or requirements were not waived under comparable Employee Benefit Plans); and (iii) Purchaser shall cause any co-payments, deductible and other eligible expenses incurred by such Transferred Employee or his or her covered dependents during the plan year in which the Closing Date occurs to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable Purchaser Plan.

(d) Purchaser shall assume, honor and be solely responsible for paying, providing and satisfying when due in accordance with the terms of any applicable Acquired Seller Plan, each of the following: (i) all accrued and unused vacation, personal days, sick pay and other paid time off for Transferred Employees earned but unused as of the Closing Date; (ii) all accrued and unpaid cash key employee retention incentive obligations as of the Closing Date; and (iii) all vacation, personal days, sick pay and other paid time off, benefits and benefit claims, severance and termination pay, notice, and benefits (including any employer Taxes related thereto), in each case of this clause (iii), accruing, incurred or arising as a result of employment or separation from employment with Purchaser on or after the Closing Date with respect to Transferred Employees.

(e) For the avoidance of doubt, (i) except as expressly provided under Section 6.3 of this Agreement, included in the definition of Working Capital, or in connection with an Acquired Seller Plan, all obligations, Liabilities relating to the employment with, termination of employment with, application for employment with or any other employment or labor-related Liabilities with respect to current and former employees of any of the Acquired Entities prior to the Closing shall be deemed an Excluded Liability and Seller shall be solely responsible for paying, providing and satisfying any such Liabilities, and that (ii) Purchaser shall be solely responsible for those Liabilities (excluding those identified in Section 1.4(d) of this Agreement) in respect of claims made by any Transferred Employee (or any other individual claiming that he or she is or should be a Transferred Employee) for severance or other termination benefits under any Acquired Seller Plan or applicable Law (including claims for wrongful dismissal, notice of termination of employment, pay in lieu of notice or breach of Contract) arising out of, relating to or in connection with any failure to offer employment to (or the terms of such offer), or to continue the employment of, any such Transferred Employee (or other individual claiming that he or she is or should be a Transferred Employee) or other failure to comply with the terms of this Agreement.

(f) Purchaser will, or will cause its Affiliates to, provide any required notice under the Worker Adjustment and Retraining Notification Act of 1988 or any similar Laws ("WARN Act") and to otherwise comply with the WARN Act with respect to any "plant closing" or "mass layoff" or group termination or similar event under the WARN Act affecting Business Employees or Transferred Employees (including as a result of the consummation of Transactions) and occurring on and after the Closing. Purchaser will not, and will cause its Affiliates not to, take any action on or after the Closing Date that would cause any termination of employment of any employees by Sellers or their Affiliates occurring prior to or at the Closing to constitute a "plant closing," "mass layoff" or group termination or similar event under the WARN Act, or to create

any Liability or penalty to Sellers or any of their Affiliates for any employment terminations under applicable Law; provided that Purchaser and Seller shall cooperate in good faith in order to ensure compliance with the WARN Act and upon written request of the Purchaser, Seller shall send WARN notices to employees and any other Persons.

(g) Purchaser shall be solely responsible for any and all obligations and Liabilities arising under Section 4980B of the Tax Code with respect to all "M&A qualified beneficiaries" as defined in 26 C.F.R. § 54.4980B-9.

(h) For any Transferred Employees who are principally based outside the United States, the Parties will comply with applicable Law and the intention of the Parties is that the provisions of this Section 6.3 shall not trigger any severance, separation pay, notice or pay in lieu thereof or similar termination indemnities.

(i) Sellers shall timely provide to Purchaser all information required to be provided by the predecessor under Section 5 of the Revenue Procedure 2004-53 and any other information reasonably required by Purchaser in connection with its reporting obligations thereunder and, provided such information is timely provided, Purchaser shall adopt the "alternate procedure" for preparing and filing IRS Forms W-2 (Wage and Tax Statements), as described in Section 5 of Revenue Procedure 2004-53.

(j) With respect to any Acquired Seller Plan that is intended to be qualified under Section 401(a) of the Tax Code, Purchaser shall contribute to such plan any unpaid employer matching contribution amounts for the 2023 plan year based on the employer matching formula in effect as of the date hereof.

(k) The provisions of this Section 6.3 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person (including for the avoidance of doubt any employees of Sellers or Transferred Employees), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 6.3 or under or by reason of any provision of this Agreement). Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any Employee Benefit Plan or any other benefit or compensation plan, program, policy, agreement or arrangement; (ii) shall, subject to compliance with the other provisions of this Section 6.3, alter or limit Purchaser's or Sellers' ability to amend, modify or terminate any particular benefit or compensation plan, program, policy, agreement or arrangement; or (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment.

6.4 Regulatory Approvals.

(a) Subject to Section 6.5, each Seller will, and will cause its Subsidiaries to, (i) make or cause to be made all filings and submissions required to be made by Seller under any applicable Laws for the consummation of the Transactions, if any, (ii) cooperate with Purchaser in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with any filings required to be made by the Purchaser Group pursuant to

Section 6.4(b), and (iii)(A) supply promptly any additional information and documentary material that may be requested in connection with the filings made pursuant to this Section 6.4(a) or Section 6.4(b) and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances in connection with such filings.

(b) Subject to Section 6.5, Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of the Purchaser Group under any applicable Laws for the consummation of the Transactions, if any, (ii) cooperate with any Seller in exchanging such information and providing such assistance as any Seller may reasonably request in connection with any filings made by any Seller pursuant to Section 6.4(a), and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with the filings made pursuant to this Section 6.4(b) or Section 6.4(a) and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances.

(c) This Section 6.4 shall not apply to efforts related to Antitrust Laws, which shall be governed by the obligations set forth in Section 6.5 below.

6.5 Antitrust Notification.

(a) To the extent required, each Seller and Purchaser (and their respective Affiliates, if applicable) will, (i) as promptly as practicable and no later than ten (10) Business Days following the date of this Agreement, file with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ"), a Notification and Report Form relating to this Agreement the Transactions pursuant to the HSR Act, and (ii) as promptly as practicable file all notifications, filings, registrations, forms and submissions, including any draft notifications in jurisdictions requiring pre-notification, as are required by the Antitrust Laws set forth on Schedule 7.1(a). Each Seller and Purchaser shall (and shall cause their respective Affiliates to) (A) cooperate and coordinate (and shall cause its respective Affiliates to cooperate and coordinate) with the other in the making of such filings; (B) supply the other (or cause the other to be supplied) with any information that may be required in order to make such filings; (C) make (or cause to be made) an appropriate response to any additional information that may be required or requested by the FTC, the DOJ or the Governmental Bodies of any other applicable jurisdiction; and (D) take (and cause their Affiliates to take) all action necessary, proper or advisable to (1) cause the expiration or termination of the applicable waiting periods pursuant to the HSR Act and any other Antitrust Laws applicable to this Agreement or the Transactions; and (2) obtain any required Consents pursuant to the HSR Act and any other Antitrust Laws applicable to this Agreement or the Transactions, in each case as promptly as reasonably practicable and in any event prior to the Outside Date. If any Party or Affiliate thereof receives any comments or a request for additional information or documentary material from any Governmental Body with respect to the Transactions pursuant to the HSR Act or any other applicable Antitrust Law, then such Party shall make (or cause to be made), as promptly as practicable and after consultation with the other Party, an appropriate response to such request. No Party shall stay, or cause its Affiliates to, toll or extend any applicable waiting period under the HSR Act, pull and refile under the HSR Act, or enter into any timing agreement or other understanding with any Governmental Body with respect to the HSR Act or any other Antitrust Law applicable to the Transactions without the prior written consent of the other Parties, which shall not be unreasonably withheld, conditioned or

delayed. Purchaser and Sellers, including their respective counsel, shall cooperate in good faith to consider any requests to stay, toll, or extend any applicable waiting period under the HSR Act or any other Antitrust Law applicable to the Transactions. Purchaser will be solely responsible for payment of all filing fees payable in connection with such filings.

(b) Subject to the immediately following sentence, each Seller and Purchaser will use their reasonable best efforts to as promptly as practicable (and in any event prior to the Outside Date) obtain any clearances, Consents, approvals, waivers, actions, waiting period expirations or terminations, non-actions or other authorizations required under the HSR Act or any other Antitrust Law for the consummation of this Agreement and the Transactions. In furtherance and not in limitation of the other covenants in this Section 6.5, and notwithstanding anything else in this Agreement, Purchaser will take any and all steps necessary to avoid or eliminate each and every impediment under the HSR Act and any other Antitrust Law as may be required to obtain satisfaction of the closing conditions set forth in Section 7.1(a) or Section 7.1(b) and allow the consummation of this Agreement and the Transactions as soon as practicable and, in any event, prior to the Outside Date, including offering, negotiating, committing to and effecting, by Consent decree, hold separate Order or otherwise, (i) the sale, divestiture, transfer, license, disposition, or hold separate (through the establishment of a trust or otherwise), of any and all of the capital stock or other equity or voting interest, assets (whether tangible or intangible), rights, properties, products or businesses of Purchaser or its Subsidiaries, or the Seller and its Subsidiaries; (ii) the termination, modification, or assignment of existing relationships, joint ventures, Contracts, or obligations of Purchaser or its Subsidiaries, or the Seller and its Subsidiaries; (iii) the modification of any course of conduct regarding future operations of Purchaser or its Subsidiaries, or the Seller and its Subsidiaries; and (iv) any other restrictions on the activities of Purchaser or its Subsidiaries, or the Seller and its Subsidiaries, including the freedom of action of Purchaser or its Subsidiaries, or the Seller and its Subsidiaries with respect to, or their ability to retain, any of their respective operations, divisions, businesses, product lines, customers, assets or rights or interests, or their freedom of action with respect to the assets, properties, or businesses to be acquired pursuant to this Agreement. Purchaser shall oppose any request for or, the entry of, and shall seek to have vacated or terminated, any Order, judgment, decree, injunction or ruling of any Governmental Body that could restrain, prevent or delay any required Consents applicable to the Transactions, including by defending through litigation, any Action asserted by any Person in any court or before any Governmental Body and by exhausting all avenues of appeal, including appealing properly any adverse decision or Order by any Governmental Body, it being understood that the costs and expenses of all such actions shall be borne by Purchaser. Notwithstanding anything to the contrary herein, Purchaser shall not be required to take or agree to take any actions with respect to the Sellers' assets, properties, or businesses that would, individually or in the aggregate, reasonably be likely to result in a material adverse effect on (i) the Sellers' assets, properties, and businesses to be acquired pursuant to this Agreement, taken as a whole or (ii) the governance or information rights necessary to enable Purchaser to operate the assets to be acquired pursuant to this Agreement following the Closing in the Ordinary Course; provided further for the avoidance of doubt, nothing in this Agreement shall require any equityholders or Affiliates of Purchaser to take or agree to take any actions, including with respect to any of their businesses, assets, or other interests. Notwithstanding anything to the contrary herein, nothing in this Agreement shall require the Sellers or any of their Subsidiaries or Affiliates to take or agree to take (and they shall not take or agree to take without the written consent of Purchaser) any action that is not conditioned on the Closing as may be required in order to obtain satisfaction of the closing conditions set forth in

Section 7.1(a) prior to the Outside Date, in each case, so as to allow the consummation of this Agreement and the Transactions as soon as practicable and, in any event, prior to the Outside Date.

(c) None of the Sellers or Purchaser will participate in any substantive meeting or discussion with any Governmental Body with respect to any filings, applications, investigation or other inquiry relating to the Transactions without giving the other Party reasonable prior notice of the meeting or discussion and, to the extent permitted by the relevant Governmental Body, the opportunity to attend and participate in such meeting or discussion, unless prohibited by such Governmental Body. Each Party will have the right to review the content of any draft notifications, formal notifications, filings, submissions, or other substantive written communications (and any analyses, memoranda, presentations, white papers, correspondence or other written materials submitted therewith) to be submitted to any Governmental Body in advance of any such submission and will consider in good faith the views of the other Party in connection therewith. Each Party acknowledges that, with respect to any non-public information provided by a Party to the other Party pursuant to this Section 6.5, the disclosing Party may (i) designate such material as restricted to "outside counsel only" and any such material shall not be shared with employees, officers or directors or their equivalents of the receiving Party without approval of the disclosing Party and (ii) redact such materials as necessary to satisfy contractual confidentiality obligations, preserve attorney-client privilege or protect material relating to the valuation of the Acquired Assets.

(d) Except as expressly contemplated or permitted by this Agreement, Purchaser will not, and will not permit Brookfield Infrastructure Fund III GP LLC (together with its controlled investment vehicles) to, directly or indirectly take any action or agree to take any action (including to acquiring or agreeing to acquire any assets or businesses) that would be reasonably likely to (i) materially delay or prevent the receipt of any required clearances, Consents, approvals, waivers, actions, waiting period expirations or terminations, non-actions or other authorizations under the HSR Act or any other Antitrust Law, (ii) increase the risk of any Governmental Body entering an Order preventing, delaying or prohibiting the consummation of the Transactions or (iii) delay or prevent the satisfaction of the closing conditions set forth in Section 7.1(a) or Section 7.1(b) or the consummation of the Transactions.

6.6 Corporate Name.

(a) As soon as reasonably practicable, but in no event more than thirty (30) days after the Closing, the Sellers shall cause an amendment to the certificate of incorporation or formation (or other constituent documents) of each Seller and each Subsidiary that is not an Acquired Entity to be filed with the appropriate Governmental Body and shall take all other action necessary to change each Seller's and such Subsidiary's name, as applicable, to a name or names not containing "Cyxtera," "Cyxtera Technologies" or any other trademark included in the Owned Intellectual Property or any name confusingly similar to the foregoing ("Transferred Marks") and will cause to be filed as soon as reasonably practicable after the Closing, in the jurisdiction in which such Seller or such Subsidiary is organized, any documents necessary to reflect such change in its name.

(b) As soon as reasonably practicable, but in no event more than fifteen (15) days after the name change contemplated by Section 6.6(a), the Sellers shall file such pleadings

and move to obtain such orders as are necessary to change the caption of each Seller petition that is a Debtor in the Bankruptcy Cases to change each Seller's and such Subsidiary's legal name on such petitions, as applicable, to a name or names not containing "Cyxtera," "Cyxtera Technologies" or any other trademark included in the Acquired Intellectual Property or any name confusingly similar to the foregoing.

(c) Purchaser (on behalf of each of the Purchasers and their respective Affiliates) hereby grant (and hereby cause its Affiliates to grant) to Seller and its Affiliates, a limited, revocable, non-exclusive license to use the Transferred Marks solely on a wind-down and transitional basis for a period from the Closing through until the earlier of (i) the first anniversary of the Closing Date and (ii) the termination of all operations at and occupancy of all sites covered by any Lease that Purchaser designates for rejection in accordance with Section 1.5 (the "IP Wind-Down Period") in a substantially similar manner as used prior to the Closing. Notwithstanding any of the foregoing, nothing in this Section 6.6 shall prevent the Sellers or any of its Affiliates from using any trademarks or service marks (i) as required by applicable Law, (ii) on internal business and legal documents, materials, and items, solely for internal use and archival purposes, or (iii) in a manner that could not reasonably constitute trademark infringement or dilution even in absence of a license (including fair use, nominative fair use, or other descriptive, non-trademark use).

(d) Promptly after the IP Wind-Down Period, the Sellers further agree that from and after the Closing, each of the Sellers and their respective Affiliates (i) will cease to make any use of the name "Cyxtera," "Cyxtera Technologies" or any other Transferred Marks and any similar names indicating affiliation with the Purchaser or any of its Affiliates and (ii) will cease using any and all Owned Intellectual Property.

6.7 Commercially Reasonable Efforts; Cooperation; Notices and Consents.

(a) Subject to the other terms of this Agreement, each Party shall, and shall cause its Subsidiaries to, use its and their respective commercially reasonable efforts to perform its and their respective obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable to cause the Transactions to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party, its Affiliates and its and their respective Advisors in connection with any step required to be taken as a part of its obligations hereunder. For the avoidance of doubt, the Parties agree that the foregoing cannot be construed to create any obligation on any of the aforementioned Advisors to take or refrain from taking any action, absent an express contractual requirement to do so, nor can any of the foregoing be construed to override existing confidentiality and other obligations owed by any Party or other Person to such Advisors.

(b) Prior to the Closing, Sellers will, and will cause the Acquired Entities to, terminate any intercompany Liability (i) between or among any Acquired Entity, on the one hand, and any Seller or its Affiliates, on the other hand, or (ii) between or among one or more Acquired Entities, in each case, without Liability to Purchaser or any of its Affiliates (including any Acquired Entities), except to the extent that such Liability is taken into account in the final calculation of Closing Working Capital, unless Purchaser otherwise requests in writing that they not so terminate any such intercompany Liability. For the avoidance of doubt, any intercompany Liability not terminated pursuant to this Section 6.7(b), including all intercompany Liabilities

solely between the Sellers or their respective Affiliates (other than Acquired Entities), shall be deemed to be an Excluded Liability.

(c) As promptly as practicable following the date hereof, Sellers will give, or will cause to be given, any notices to third parties, and will use their respective commercially reasonable efforts to obtain any third party Consents or sublicenses, in each case, that may be triggered by or required in connection with the Transactions, including the assignment to Purchaser or its Designee, of the Assigned Contracts. On the final termination of the Factoring Facility, to occur no later than the Closing, Sellers shall repay, or cause to be repaid, any outstanding amounts still due and owing thereunder and shall obtain a standard payoff letter from PNC Bank National Association, as administrative agent, and file lien releases and account control agreement terminations, releasing the collateral thereunder. Sellers agree to work in good faith with PNC, as administrative agent, under the Factoring Facility to facilitate a repurchase of account receivables, if any, that remain outstanding thereunder on the date of termination thereof.

(d) Promptly following the date hereof, Seller will use reasonable best efforts to provide Purchaser with a true, complete and correct list of all Permits maintained by the Sellers and their Subsidiaries that are necessary or required to conduct their businesses as conducted as of the date hereof.

6.8 Further Assurances. Except as expressly limited by this Agreement or any other Transaction Agreement, from time to time, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments, and will take, or cause to be taken, all such further or other actions as may be reasonably necessary or desirable to evidence and effectuate the Transactions, the transfer of title to the Acquired Assets to, and assumption of Assumed Liabilities by, Purchaser or its Designee(s) in accordance with the terms of this Agreement, and the DLR Transactions, to the extent applicable (including any distribution of cash contemplated thereby).

6.9 Insurance Matters. Purchaser acknowledges that, subject to the next sentence, from and after the Closing, all nontransferable and non-assignable insurance coverage provided in relation to any Seller and the Acquired Assets that is maintained by such Seller or its Affiliates (whether such policies are maintained with third party insurers or with such Seller or its Affiliates) shall not provide any coverage to Purchaser and the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies. From and after the Closing, Purchaser shall have the right to make claims and the right to any recovered insurance proceeds with respect to, and to the extent of any losses sustained or assumed by the Purchaser or its Designee or their respective Affiliates with respect to, any matter related to the Acquired Assets or Assumed Liabilities or Acquired Entities under any insurance policies for occurrence-based claims pertaining to or arising out of occurrences that took place in periods prior to the Closing, and Sellers shall seek the maximum recovery or allow Purchaser to seek recovery under such insurance policies, and Sellers shall cooperate with Purchaser's reasonable requests if it seeks recovery, with respect to such matters and shall remit (or, at Purchaser's request, direct any such insurer to pay directly to Purchaser) any insurance proceeds actually obtained therefrom (net of Sellers' reasonable and documented out-of-pocket costs and expenses of seeking such recovery, to the extent not otherwise paid or reimbursed by Purchaser) to Purchaser or its Designee.

6.10 Third Party Credit Support Obligations.

(a) Purchaser acknowledges that in the course of conduct of their business, Sellers and their Affiliates may have entered into various arrangements (a) in which guarantees, letters of credit, sureties, bonds or similar arrangements were issued by Sellers or their Affiliates and (b) in which Sellers or their Affiliates are the primary obligors on other Contracts, in any such case to support or facilitate such business, which are set forth in Schedule 6.10(a) (the "Seller Support Obligations"). It is understood that the Seller Support Obligations are not intended to continue after the Closing. Purchaser agrees that it shall use its commercially reasonable efforts to obtain either (i) the full and unconditional release of Sellers and their Affiliates of each if the Seller Support Obligations, or (ii) replacements for the Seller Support Obligations, in either case that will be in effect at the Closing, or, in the case of Seller Support Obligations described in the foregoing clause (b), will use its commercially reasonable efforts to arrange for itself or one of its Subsidiaries to be substituted as the primary obligor thereon effective as of the Closing through an assumption, accession, acknowledgement or similar agreement (which shall include the full and unconditional release of Sellers and their Affiliates) with the beneficiary of the applicable Seller Support Obligation; it being understood and agreed that such exercise of commercially reasonable efforts shall not require Purchaser to (x) expend its own cash or other assets or property in order to replace such Seller Support Obligations or otherwise to fulfill its obligations under this Schedule 6.10(a) or (y) breach its obligations with respect to the Debt Financing or take any action that could reasonably be expected to cause any of the conditions precedent therein to not be satisfied. Whether or not Purchaser is able to satisfy the terms of the immediately preceding sentence, Purchaser shall indemnify Sellers and their Affiliates and each of their respective officers, directors, employees, agents and representatives from and against any and all Liabilities incurred by any of them relating to the Seller Support Obligations, except to the extent due to the breach, gross negligence or willful misconduct of the Sellers.

(b) Except for those set forth in Schedule 6.10(b), Sellers and their Affiliates shall (i) maintain the effectiveness of each letter of credit, surety bond or similar obligation of a Seller and its Subsidiaries from and after the Closing Date until it is released by the secured party, (ii) not amend or modify such letter of credit, surety bond or similar obligation of a Seller and its Subsidiaries in a manner adverse to Purchaser and (iii) not let any such letter of credit, surety bond or similar obligation of a Seller and its Subsidiaries lapse or terminate without the prior written consent of Purchaser.

(c) During the period following the Closing and until the first (1st) anniversary of the Closing Date, Purchaser shall (i) use commercially reasonable efforts to collect any cash collateral held by or any behalf of any utility provider as security for any utilities-related Liabilities (including deposits for electricity, telephone or other utilities) of the Sellers or any Acquired Entity, and (ii) remit to the Sellers, by wire transfer of immediately available funds to such account designated in writing by CTI, any such actually collected amounts (net of any documented, out-of-pocket third party costs of recovery) and any amounts applied for credit on invoices, promptly following actual receipt by Purchaser thereof prior to the first (1st) anniversary of the Closing Date, solely to the extent such amounts are not otherwise included in the Cash Amount for purposes of this Agreement; provided that, notwithstanding the foregoing, Purchaser shall not be required to initiate or pursue any Action against any applicable utility provider in connection with the obligations set forth in this Section 6.10(c). Notwithstanding the foregoing, at the first (1st)

anniversary of the Closing Date, solely to the extent Purchaser has not previously remitted to the Sellers an amount equal to or greater than $6,000,000 pursuant to the foregoing sentence and clause (ii) of the definition of Cash Amount, Purchaser shall remit to the Sellers, by wire transfer of immediately available funds to such account designated in writing by CTI, an amount equal to the excess (if any) of (x) $6,000,000, over (y) any and all amounts previously remitted by Purchaser to the Sellers pursuant to this Section 6.10(c) and clause (ii) of the definition of Cash Amount (such amount, the "Final Deposits Payment Amount"). Upon the payment of the Final Deposits Payment Amount by Purchaser, no amount shall be due and owing to the Sellers pursuant to this Section 6.10(c).

6.11 Acknowledgement by Purchaser.

(a) Without limiting the generality of Section 3.23, in connection with the investigation by the Purchaser of Sellers and their Subsidiaries, Purchaser and the members of the Purchaser Group, and the Advisors of each of the foregoing, have received or may receive, from or on behalf of Seller or other Seller Parties, certain projections, forward-looking statements and other forecasts (whether in written, electronic, or oral form, and including in the Information Presentation, Dataroom, management meetings, etc.) (collectively, "Projections"). Purchaser acknowledges and agrees, on its own behalf and on behalf of the members of Purchaser Group, that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of Seller and its Subsidiaries, (ii) there are uncertainties inherent in attempting to make such Projections, (iii) Purchaser is familiar with such uncertainties, and (iv) Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Projections (including the reasonableness of the assumptions underlying such Projections).

(b) Purchaser acknowledges and agrees, on its own behalf and on behalf of the members of Purchaser Group, that it will not assert, institute, or maintain, and will cause each member of the Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.11. Purchaser acknowledges and agrees, on its own behalf and on behalf of the members of Purchaser Group, that the covenants and agreements contained in this Section 6.11 (i) require performance after the Closing to the maximum extent permitted by applicable Law and (ii) are an integral part of the Transactions and that, without these agreements set forth in this Section 6.11, Seller would not enter into this Agreement. Notwithstanding anything to the contrary contained herein, nothing in this Section 6.11 shall limit or affect any claims for Fraud.

6.12 Receipt of Misdirected Assets; Wrong Pockets. From and after the Closing, if any Seller or any of its respective Affiliates receives any right, property or asset that is an Acquired Asset, the applicable Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by such Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in

the form of cash, checks, or other documents) to the applicable Seller, and such asset will be deemed the property of such Seller held in trust by Purchaser for such Seller until so transferred.

6.13 Directors' and Officers' Indemnification. Following the Closing until the sixth (6th) anniversary thereof, Purchaser shall cause the Acquired Entities not to amend, repeal or otherwise modify the Acquired Entities' constitutive documents as in effect at the Closing, in any manner that would adversely affect the indemnification and exculpation rights thereunder of individuals who are or were directors or officers of the Acquired Entities with respect to periods prior to the Closing. Purchaser shall not take any action to cancel or otherwise reduce coverage under any "tail" insurance policies purchased by the Acquired Entities prior to the Closing; provided that no payments shall be required of the Acquired Entities or the Purchaser Group with respect to such policies after the Closing.

6.14 Financing Matters.

(a) From the date hereof until the Closing or the earlier termination of this Agreement, the Sellers shall, and shall cause each Acquired Entity and its and their respective representatives to use their commercially reasonable efforts to reasonably cooperate with Purchaser and its Affiliates in connection with, the arrangement of any debt financing to be incurred on the Closing Date in connection with the Transactions (the "Debt Financing"), which shall include using commercially reasonable efforts for (i) upon reasonable advance notice and at mutually agreeable times, participating in a reasonable number of bank meetings and similar presentations to and with the Debt Financing Sources and rating agencies, including direct contact between senior management and the other representatives of the Sellers and their Subsidiaries or such Acquired Entity, on the one hand, and the actual and potential Debt Financing Sources, on the other hand, (ii) furnishing Purchaser with historical financial statements and other information regarding the Sellers and their Subsidiaries as is customarily provided in connection with financings of the type contemplated by the Debt Financing in the format and presentation, presently prepared by the Seller's current preparer, (iii) providing information for the preparation of any pledge and security agreements and other definitive financing documentation for the Debt Financing, including schedules to the definitive documentation for the Debt Financing as may be reasonably requested by Purchaser, (iv) facilitating the pledging of collateral for the Debt Financing (including cooperation in connection with the (A) pay-off of existing Indebtedness to the extent contemplated by this Agreement and the release (or, at Purchaser's request in the case of jurisdictions that impose mortgage recording or similar taxes, assignment) of related Encumbrances and termination of security interests (including delivering prepayment or termination notices as required by the terms of any existing Indebtedness and delivering the customary payoff letters), (B) Lease amendments to facilitate such pledging, and (C) obtaining of any mortgages in favor of the Debt Financing Sources on any Acquired Assets that are Owned Real Property or Leased Real Property) and (v) providing to Purchaser, it Affiliates and their Debt Financing Sources at least four (4) Business Days prior to the Closing Date all documentation and other information required by Governmental Bodies under applicable "know your customer" and anti-money laundering rules and regulations. Purchaser and its Affiliates shall be permitted to disclose confidential information subject to the Confidentiality Agreement to any parties providing commitments for the Debt Financing, rating agencies and prospective lenders, subject to such parties providing commitments, rating agencies and prospective lenders entering into customary confidentiality undertakings for a syndication with respect to such information.

(b) Each Seller and Subsidiary of a Seller consents to the customary and reasonable use of such Seller's or Subsidiary's logos in connection with any Debt Financing; provided that such logos are used solely in a manner that is not intended, or reasonably likely, to harm or disparage the Sellers and their Subsidiaries or the reputation or goodwill of the Sellers and their Subsidiaries.

(c) Notwithstanding anything in this Agreement to the contrary, nothing herein shall require (i) any Seller or Subsidiary of a Seller or any of their representatives to execute or enter into any certificate, instrument, agreement or other document in connection with the Debt Financing, (ii) cooperation or other actions or efforts on the part of the Sellers or their Subsidiaries, or any of their respective representatives, in connection with the Debt Financing to the extent it would interfere unreasonably with the business or operations of such Seller or Subsidiary of a Seller, (iii) the Sellers or their Subsidiaries or any of their respective representatives to pay any commitment or other fee or incur any other Liability in connection with the Debt Financing that is not reimbursed by Purchaser, (iv) the board of directors or similar governing body of any Seller of Subsidiary of a Seller, prior to the Closing, to adopt resolutions approving, or otherwise approve, the agreements, documents or instruments pursuant to which the Debt Financing is made, (v) the Sellers or their Subsidiaries to provide any access or information if (A) doing so would reasonably be expected to violate any fiduciary duty, applicable law or existing Contract to which a member of the Sellers or their Subsidiaries is party (B) doing so would reasonably be expected to result in the loss of the ability to successfully assert attorney-client, work product or similar privileges; provided that the Sellers and their Subsidiaries shall use reasonable best efforts to make appropriate substitute arrangements under circumstances in which the foregoing restrictions do not apply, or (C) in a format or presentation not consistent with Seller's current practices (vi) cooperation that would violate, or result in the waiver of any benefit under this Agreement, any other material Contract (not entered in contemplation hereof) or any Law to which the Sellers or their Subsidiaries are a party or (vii) the Sellers or their Subsidiaries or any of their respective representatives to prepare or provide (and Purchaser shall be solely responsible for) pro forma financial information, including pro forma cost savings, synergies, capitalization or other pro forma adjustments desired to be incorporated into any pro forma financial information in connection with the Debt Financing; provided that the Sellers and their Subsidiaries and their respective representatives shall reasonably assist Purchaser in the preparation of such pro forma financial information.

(d) All non-public information regarding Sellers provided to Purchaser, its Affiliates, its Debt Financing Sources, or its Advisors pursuant to this Section 6.14 shall be kept confidential by them in accordance with the Confidentiality Agreement or confidentiality provisions comparable to those set forth in the Confidentiality Agreement. None of Sellers shall be required to disclose any information that is subject to attorney-client or similar privilege. None of Sellers shall be required to take any action pursuant to this Section 6.14 that would subject it to actual or potential Liability for which it would not be indemnified hereunder or to bear any cost or expense or to pay any commitment or other fee or provide or agree to provide any indemnity in connection with the Debt Financing. Purchaser shall indemnify and hold harmless the Seller Parties from and against any and all Liabilities, suffered or incurred by them in connection with this Section 6.14 and any information utilized in connection therewith, in each case, except such Liabilities suffered or incurred as a result of such Person's gross negligence, willful misconduct or willful breach of this Agreement, in each case, as determined by a final, non-appealable decision

of a court of competent jurisdiction. Purchaser shall, promptly upon request by CTI, reimburse Sellers for all reasonable and documented out-of-pocket costs incurred by them in connection with their complying with their obligations under this Section 6.14.

(e) Notwithstanding this Section 6.14 or anything else in this Agreement, Purchaser acknowledges and agrees that (i) it is not a condition to the Closing or to any of Purchaser's other obligations under this Agreement that the Purchaser obtain financing for or related to any of the Transaction (including all or any portion of the Debt Financing). The Parties agree that this Section 6.14 (and not Section 6.7 or Section 6.8) sets forth Sellers' sole obligations with respect to the Debt Financing and (ii) the condition set forth in Section 7.2(b), as it applies to Sellers' obligations under this Section 6.14, shall be deemed satisfied unless the Debt Financing has not been obtained as a direct result of Sellers' knowing and material willful breach of their obligations under this Section 6.14.

6.15 Title Insurance Policies; Memoranda of Lease; Estoppel Certificates. The Sellers and their Subsidiaries shall cooperate reasonably with Purchaser in Purchaser's efforts to (i) obtain any commitments, reports or policies of title insurance with respect to any Owned Real Property or Leased Real Property, including by providing affidavits, indemnities and other similar instruments reasonably required by the applicable title insurance companies in connection therewith, which affidavits, indemnities, and instruments shall not expand any representation or warranty, or any remedy or Liability, of any Party and (ii) place each Lease of record, including by executing and delivering and using commercially reasonable efforts to cause the landlord or other counterparty under such Lease to execute and deliver a memorandum of such Lease (as well as the applicable Assignment and Assumption of Lease or a memorandum thereof) in a form appropriate for recordation in the applicable jurisdiction; provided that Purchaser shall be responsible for all recording costs and any applicable transfer or conveyance taxes (or similar taxes) payable in connection with the recordation of any memorandum of a Lease other than any such items which are not payable as a result of the exemption available under Section 1146(a) of the Bankruptcy Code. The Sellers and their Subsidiaries shall use commercially reasonable efforts to cause the landlord or other counterparty under each Lease to execute and deliver (for the benefit of Purchaser and its financing sources) within thirty (30) days prior to the Closing an estoppel certificate in a form that is reasonably satisfactory to Purchaser.

6.16 Seller Joinder. Following the date hereof, at Purchaser's request, CTI or the other Sellers shall promptly cause the UK Seller, the Germany Seller or the Singapore Seller, to the extent such Person is designated as a Seller in accordance with any DLR Transaction and is not already a Seller hereunder, to execute and deliver to the other Parties hereto a joinder to this Agreement in the form attached hereto as Exhibit I (each, a "Seller Joinder") and, from and after the delivery of such Seller Joinder, such UK Seller, Germany Seller or Singapore Seller (as applicable) shall be deemed to be a Seller and a Party for such purposes of, and in connection with, the consummation of such DLR Transaction; provided, that such UK Seller, Germany Seller or Singapore Seller (as applicable) will remain a Transferred Subsidiary for all purposes hereof; provided that the Parties acknowledge and agree that the Germany Seller, the Singapore Seller, and the UK Seller are not and shall not in any event be Debtors and, as such, none of the provisions of this Agreement incorporating, applying, or involving the Bankruptcy Code (but only to the extent the Bankruptcy Code is so incorporated, applied, or involved and not otherwise disapplying

such provisions generally) shall apply to the transactions in which the Germany Seller, the Singapore Seller, and the UK Seller directly participate hereunder.

6.17 Confidentiality. The Confidentiality Agreement shall automatically terminate in connection with the Closing without further action by any Party thereto. Following the Closing, each Seller shall, and shall cause the other Seller Parties, to, (i) maintain the confidentiality of, (ii) not use, and (iii) not divulge to any Person (other than its employees and Advisors), any confidential, non-public or proprietary information included in the Acquired Assets or otherwise relating to the business of the Sellers and their Subsidiaries ("Confidential Information"), except to the extent necessary in connection with their winddown, liquidation, and related activities (including Tax Returns and processing of claims in the Bankruptcy Case) and the operation and winddown of any sites governed by any Lease that Purchaser designates for rejection in accordance with Section 1.5(b), with the prior written consent of Purchaser, or as may be required by applicable Law; provided that such Seller Parties shall not be subject to such obligation of confidentiality for Confidential Information that is or becomes generally available to the public without breach of this Agreement by such Seller Party. If any Seller Party shall be required by applicable Law to divulge any Confidential Information, such Seller Party shall provide Purchaser with prompt written notice of each such request so that Purchaser may, at Purchaser's sole expense, seek an appropriate protective Order or other appropriate remedy, and such Seller Party shall reasonably cooperate with Purchaser to obtain a protective Order or other remedy; provided that, in the event that a protective Order or other remedy is not obtained, such Seller Party shall furnish only that portion of such Confidential Information which, in the opinion of its counsel, such Seller Party is legally compelled to disclose and shall exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any such Confidential Information so disclosed.

6.18 DLR Transactions.

(a) UK Transaction.

(i) If a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b) that contemplates the consummation of the UK Transaction, then no later than three (3) Business Days prior to the Closing Date, the Sellers shall, and shall cause their relevant respective Subsidiaries to, effect the restructuring transactions set forth on the UK Restructuring Steps Plan attached hereto as Exhibit H (such transactions, the "UK Restructuring Transactions"), reasonably cooperate with Purchaser and its Affiliates in connection therewith, including by providing any reasonably requested information required in connection with the foregoing to Purchaser, its Affiliates and their respective representatives, and, following the UK Restructuring Transactions, at the Closing in accordance with Section 2.3(b), sell, transfer, assign, convey, and deliver to the Designee specified in the DLR Election Notice (in its capacity as a Designee hereunder) all shares of capital stock or other Equity Interests of any entity formed (and to which the designated assets and liabilities were transferred) pursuant to the UK Restructuring Transactions free and clear of any Encumbrances (other than Encumbrances arising under applicable securities Laws), on the terms and subject to the conditions set forth herein (the "UK Transaction"), in exchange for the payment and delivery of the UK Consideration

Payment, payable by the Designee specified in the DLR Election Notice (in its capacity as a Designee hereunder) to the UK Seller.

(ii) In connection with the consummation of the UK Transaction, Sellers shall, and shall cause their relevant respective Subsidiaries to use their commercially reasonable efforts to obtain all applicable third-party consents or approvals and send any applicable notices, in each case, reasonably required to effect the UK Transaction. Purchaser shall prepare the initial drafts of any certificates, filings, Contracts, agreements or other documentation, and any amendments or supplements thereto, to be made or entered into by any Seller, or any of their respective Subsidiaries, giving effect to, or entered into in connection with, the UK Transaction (the "UK Documents"), substantially complete initial drafts of which shall be delivered to Sellers at least three (3) Business Days in advance of the effectiveness of the transactions contemplated therein or, if earlier, the execution thereof. Any and all comments of Sellers with respect to any UK Document made in good faith shall be reflected in the finalized UK Documents, and the relevant Parties shall each cooperate with each other in respect thereof. The UK Documents shall not expand any representation or warranty, or any remedy or Liability, of any Party and shall not require any Seller or any of its Subsidiaries to incur any Liability in connection with the UK Documents that is not reimbursed by Purchaser in accordance with Section 6.18. An executed version of each of the finalized UK Documents shall promptly be provided to Purchaser upon its execution.

(b) Germany Transaction.

(i) If a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b) that contemplates the consummation of the Germany Transaction, then the Sellers shall cause the Germany Seller to, at the Closing in accordance with Section 2.3(b), enter into the Germany Lease Termination Agreements and terminate the leases set forth on Exhibit H hereto between the Germany Seller and the applicable Designee or its Affiliate (such leases, the "Germany Leases") in exchange for the payment and delivery of the Germany Consideration Payment, payable by the Designee specified in the DLR Election Notice (in its capacity as Designee hereunder) to the Germany Seller (collectively, the "Germany Transaction").

(ii) In connection with the consummation of the Germany Transaction, Sellers shall, and shall cause their relevant respective Subsidiaries to use their commercially reasonable efforts to obtain all applicable third-party consents or approvals and send any applicable notices, in each case, reasonably required to effect the Germany Transaction. Purchaser shall prepare the initial drafts of any certificates, filings, Contracts, agreements or other documentation, and any amendments or supplements thereto, to be made or entered into by any Seller, or any of their respective Subsidiaries, giving effect to, or entered into in connection with, the Germany Transaction (the "Germany Documents"), substantially complete initial drafts of which shall be delivered to Sellers at least three (3) Business Days in advance of the effectiveness of the transactions contemplated therein or, if earlier, the execution thereof. Any and all comments of Sellers with respect to any Germany Document made in good faith shall be reflected in the finalized Germany Documents, and the relevant Parties shall each cooperate with each other in respect thereof.

The Germany Documents shall not expand any representation or warranty, or any remedy or Liability, of any Party and shall not require any Seller or any of its Subsidiaries to incur any Liability in connection with the Germany Documents that is not reimbursed by Purchaser in accordance with Section 6.18. An executed version of each of the finalized Germany Documents shall promptly be provided to Purchaser upon its execution.

(c) Singapore Transaction.

(i) If a DLR Election Notice is provided by Purchaser in accordance with Section 2.3(b) that contemplates the consummation of the Singapore Transaction, then the Sellers shall cause the Singapore Seller to, at the Closing in accordance with Section 2.3(b), (x) enter into the Singapore Lease Termination Agreement(s) and terminate the lease(s) set forth on Exhibit H hereto between the Singapore Seller and the applicable Designee or its Affiliate which are designated for termination (such leases, the "Singapore Leases" and such transactions, the "Singapore Lease Termination"), or (y) sell, transfer, assign, convey, and deliver to Purchaser's Designee as set forth in the DLR Election Notice the assets and liabilities of the Singapore Seller as set forth on Exhibit H free and clear of all Encumbrances other than Permitted Post-Closing Encumbrances, on the terms and subject to the conditions set forth herein (the "Singapore Asset Sale" and together with the Singapore Lease Termination (if applicable), collectively, the "Singapore Transaction"), in the case of either clause (x) or (y), in exchange for the payment and delivery of the Singapore Consideration Payment, payable by the Designee specified in the DLR Election Notice (in its capacity as a Designee hereunder) to the Singapore Seller.

(ii) In connection with the consummation of the Singapore Transaction, Sellers shall, and shall cause their relevant respective Subsidiaries to use their commercially reasonable efforts to obtain all applicable third-party consents or approvals and send any applicable notices, in each case, reasonably required to effect the Singapore Transaction. Purchaser shall prepare the initial drafts of any certificates, filings, Contracts, agreements or other documentation, and any amendments or supplements thereto, to be made or entered into by any Seller, or any of their respective Subsidiaries, giving effect to, or entered into in connection with, the Singapore Transaction (the "Singapore Documents"), substantially complete initial drafts of which shall be delivered to Sellers at least three (3) Business Days in advance of the effectiveness of the transactions contemplated therein or, if earlier, the execution thereof. Any and all comments of Sellers with respect to any Singapore Document made in good faith shall be reflected in the finalized Singapore Documents, and the relevant Parties shall each cooperate with each other in respect thereof. The Singapore Documents shall not expand any representation or warranty, or any remedy or Liability, of any Party and shall not require any Seller or any of its Subsidiaries to incur any Liability in connection with the Singapore Documents that is not reimbursed by Purchaser in accordance with Section 6.18. An executed version of each of the finalized Singapore Documents shall promptly be provided to Purchaser upon its execution.

(d) United States Intangibles Transaction.

(i) If a DLR Election Notice contemplating the consummation of the UK Transaction, the Germany Transaction, or the Singapore Transaction is provided by Purchaser in accordance with Section 2.3(b), then, in connection with any of the UK Transaction, the Germany Transaction, or the Singapore Transaction occurring at the Closing in accordance with Section 2.3(b), the Sellers (other than the UK Seller, the Germany Seller and the Singapore Seller) shall, contemporaneously therewith, sell, transfer, assign, convey, and deliver to the Designee specified in the DLR Election Notice (in its capacity as a Designee hereunder) those rights and entitlements to and under any Contracts, Intellectual Property and other intangible assets that are Acquired Assets solely to the extent relating to, and necessary for the operations of, the assets and liabilities transferred to such Designee in the UK Transaction, the Germany Transaction or the Singapore Asset Sale (in each case, as may be (and solely to the extent) specified on Exhibit H), as applicable (the "US Intangibles Transfer"), in exchange for the payment and delivery of the US Intangibles Consideration Payment, payable by the Designee specified in the DLR Election Notice (in its capacity as a Designee hereunder) to Sellers (other than the UK Seller, the Germany Seller, and the Singapore Seller).

(ii) Purchaser shall prepare the initial drafts of any certificates, filings, Contracts, agreements or other documentation, and any amendments or supplements thereto, to be made or entered into by any Seller, or any of their respective Subsidiaries, giving effect to, or entered into in connection with, the US Intangibles Transfer (the "US Intangible Transfer Documents"), substantially complete initial drafts of which shall be delivered to Sellers at least three (3) Business Days in advance of the effectiveness of the transactions contemplated therein or, if earlier, the execution thereof. Any and all comments of Seller with respect to any US Intangible Transfer Documents made in good faith shall be reflected in the finalized US Intangible Transfer Documents, and the relevant Parties shall each cooperate with each other in respect thereof. The US Intangible Transfer Documents shall not expand any representation or warranty, or any remedy or Liability, of any Party and shall not require any Seller or any of its Subsidiaries to incur any Liability in connection with the US Intangible Transfer Documents that is not reimbursed by Purchaser in accordance with Section 6.18. An executed version of each of the finalized US Intangible Transfer Documents shall promptly be provided to Purchaser upon its execution.

(e) Notwithstanding anything to the contrary herein (including Section 10.5), Exhibit H and Schedule 9.2 (solely to the extent of the value allocated to the transactions set forth in this Section 6.18) may be amended, modified or supplemented as determined by the Purchaser, subject only to the consent of CTI (such consent not to be unreasonably withheld, conditioned or delayed), from time to time at any time not later than five (5) Business Days prior to the Closing Date.

6.19 Shared Agreements. The Parties acknowledge that certain Available Contracts relate to business conducted at more than one property of a Seller or its Subsidiaries, including Acquired Leased Real Property, Owned Real Property or leased real property of an Acquired Entity, or otherwise relating to a Shared Customer Contract (as defined in the Specified Agreement) (each, together with any applicable related Contracts between any Seller and the applicable counterparty, a "Shared Agreement"). From and after the date hereof, if requested by

Purchaser in writing, the Parties will act in good faith and use commercially reasonable efforts to obtain from the applicable counterparty to each Shared Agreement written consent (if required) to separate Shared Agreements each into two or more separate Contracts (each, a "Separated Agreement") and to separate such Shared Agreements, effective as of the Closing, with each such Separated Agreement covering a separate property included in the Acquired Assets. Prior to the separation of such Shared Agreement each of the Parties will cooperate in good faith in negotiating with the applicable counterparty to achieve at the Closing or as promptly as practicable thereafter the separation of rights and obligations contemplated by this Section 6.19, in each case if the consent of or notice to such counterparty is required pursuant to the applicable Shared Agreement. The Parties will also use their respective commercially reasonable efforts to cause and facilitate each Separated Agreement to: (i) be separate and independent from Separated Agreements of another Party, a Designee or their respective Affiliates and (ii) not contain any cross default, set-off, joint or continuing liability, or similar provisions that can be triggered under other Separated Agreements of another Party, a Designee or their respective Affiliates. Notwithstanding this Section 6.19 or anything else in this Agreement, Purchaser acknowledges and agrees that it is not a condition to the Closing or to any of Purchaser's other obligations under this Agreement that the Parties obtain any Separated Agreements. The Parties agree that this Section 6.19 (and not Section 6.7 or Section 6.8) sets forth Sellers' sole obligations with respect to the potential Separated Agreements and (ii) the condition set forth in Section 7.2(b), as it applies to Sellers' obligations under this Section 6.19, shall be deemed satisfied unless the failure to obtain a material number of Separated Agreements is a direct result of Sellers' uncured breach of their obligations under this Section 6.19.

6.20 DLR Closing Distributions. From and after the date hereof, each of the Sellers, the UK Seller, the Germany Seller, the Singapore Seller, and each of their respective Subsidiaries shall use reasonable best efforts to take, or cause to be taken, subject to compliance with applicable Law, any and all such actions as may be necessary or desirable (including approving the relevant book accounts and distributable profits on a prospective basis, taking into account the DLR Transactions) to ensure that, promptly following the consummation of any DLR Transaction (to the extent applicable), each of the UK Seller, the Germany Seller, and the Singapore Seller will, and will be authorized and permitted to, distribute, to the maximum extent permitted by Law and without limitation of the Sellers' obligations pursuant to Section 6.7(b), the portion of the Aggregate DLR Consideration Amount received by each of the UK Seller, the Germany Seller, or the Singapore Seller, as applicable, in connection with the consummation of any DLR Transaction to any Seller(s) other than the UK Seller, the Germany Seller and the Singapore Seller. In furtherance of the foregoing, at the Closing as set forth in Section 2.3(b), each of the UK Seller, the Germany Seller, and the Singapore Seller shall distribute to the maximum extent permitted by Law, the portion of the Aggregate DLR Consideration Amount received by each of the UK Seller, the Germany Seller, or the Singapore Seller, as applicable, in connection with the consummation of any DLR Transaction to any Seller(s) designated by CTI (other than the UK Seller, the Germany Seller and the Singapore Seller). Without limitation of Sellers' obligations hereunder, Purchaser and its applicable Designee(s) shall reasonably cooperate with Sellers with respect to Sellers' implementation of the provisions of this Section 6.20, and Sellers' shall reasonably consult with Purchaser in determining the portion, if any, of the Aggregate DLR Consideration Amount permitted to be distributed by Law and the determination of any withholding Taxes that may be imposed in connection with such distribution.

## ARTICLE VII
## CONDITIONS TO CLOSING

7.1 Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each Party to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by CTI (on behalf of each of the Sellers) and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) the expiration or termination of any required waiting period (and any extensions thereof, including any agreement or commitments with any Governmental Body to delay consummation of the Transaction (e.g., timing agreements)) under the HSR Act or any other Antitrust Law set forth in Schedule 7.1 applicable to the Transactions, and the receipt of any required approval related to the Transactions under any Antitrust Law set forth in Schedule 7.1;

(b) no Governmental Body of competent jurisdiction shall have issued, enacted, entered, promulgated or enforced any Order (including any temporary restraining Order or preliminary or permanent injunction) or Law restraining, enjoining or otherwise prohibiting the Closing that is continuing in effect;

(c) the Bankruptcy Court shall have entered the Confirmation Order approving the Plan, which Confirmation Order shall be a Final Order and which shall be in all respects consistent with the terms of this Agreement and otherwise satisfactory to Purchaser (with respect to all provisions of the foregoing that relate to or affect Purchaser, this Agreement, or the Transactions), and no Order staying, reversing, modifying or amending the Confirmation Order shall be in effect on the Closing Date, and which Plan shall be in all respects consistent with the terms of this Agreement and otherwise satisfactory to Purchaser (with respect to all provisions of the foregoing that relate to or affect Purchaser, this Agreement, or the Transactions);

(d) the Effective Date of the Plan shall have occurred (which may be contemporaneous with the Closing); and

(e) the CCAA Court shall have pronounced the CCAA Orders, which CCAA Orders shall each be a Final Order and in all respects consistent with the terms of this Agreement and otherwise satisfactory to Sellers and, solely with respect to the Purchaser, this Agreement, or the Transactions, Purchaser, and no Order staying, setting-side, reversing, modifying or amending the CCAA Orders shall be in effect on the Closing Date.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties made by Sellers in Article III (in each case, other than the Fundamental Representations) shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, except (A) that representations and warranties that are made as of a specified date need be true and correct in all respects only as of such date and (B) to the extent the failure of such representations and warranties to be true and correct as of such dates (without giving

effect to any limitation as to "materiality," "material adverse effect," "Material Adverse Effect" or similar qualifiers contained therein (other than "material weaknesses" in Section 3.5(b) and the word "Material" when used in the instances of the defined terms "Material Contract," and "Material Supplier")) has not had a Material Adverse Effect and (ii) the representations and warranties set forth in Section 3.1 (Organization and Qualification) (other than Section 3.1(b)), Section 3.2 (Authorization of Agreement), Section 3.3 (Equity Interests of Acquired Entities), Section 3.4 (Conflicts; Consents) (solely with respect to clause (i) thereof), Section 3.6(b) (Absence of Certain Changes or Developments), Section 3.9(e) (Title to Properties; Sufficiency of Tangible Assets) (solely with respect to the last sentence thereof) and Section 3.20 (Brokers) (collectively, the "Fundamental Representations") shall be true and correct in all respects (except for any *de minimis* inaccuracy therein) as of the Closing Date as though made on and as of the Closing Date, except that such Fundamental Representations that are made as of a specified date need be true and correct in all respects (except for any *de minimis* inaccuracy therein) only as of such date.

(b) Compliance with this Agreement. Sellers shall have performed or complied with, in all material respects, all of the obligations and covenants required to be performed or complied with by the Sellers under this Agreement on or prior to Closing.

(c) Closing Certificate. Purchaser shall have received on and as of the Closing Date a certificate of an authorized officer of the Sellers confirming that the conditions set forth Section 7.2(a), Section 7.2(b) and Section 7.2(d) have been satisfied.

(d) No Material Adverse Effect. Since the date hereof, there shall not have occurred a Material Adverse Effect.

(e) Certain Documents. Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4; provided, that the sole remedy of Purchaser for the failure by the Sellers to provide to Purchaser the documentation described in Section 2.4(i) shall be to withhold Taxes from the consideration otherwise payable pursuant to this Agreement in accordance with Section 2.7.

(f) Acquired Entities Financing Encumbrances. Each of the applicable Acquired Entities shall have obtained a complete, irrevocable and unconditional release in a form satisfactory to Purchaser from all Encumbrances in connection with the Term Loan Facilities, Revolving Credit Facility, Bridge Facility and DIP Facility (each as defined in the Final DIP Order) to the extent such Acquired Entity has granted or incurred any Encumbrance in connection therewith.

(g) All Material Contracts and Acquired Leases designated for assumption and assignment by Purchaser pursuant to Section 1.1(a), Section 1.1(e), Section 1.5(b) or Section 1.5(c), as applicable, shall have been assigned by the applicable Seller to Purchaser or its Designee pursuant to sections 105, 365 and 1123(b)(2) of the Bankruptcy Code, and all Cure Costs shall have been paid by the applicable Seller in full.

7.3 Conditions Precedent to the Obligations of Seller. The obligations of the Sellers to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written

waiver by CTI (on behalf of each of the Sellers) in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties made by Purchaser in Article IV shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (other than representations and warranties that are made as of a specified date, which shall be true and correct in all material respects only as of such date), except where the failure of such representations or warranties to be so true and correct (without giving effect to any limitation as to "materiality," "material adverse effect," "Material Adverse Effect" or similar qualifiers contained therein) has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the Closing.

(b) Compliance with this Agreement. Purchaser shall have performed or complied with, in all material respects, all of the obligations and covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date.

(c) Closing Certificate. Seller shall have received on and as of the Closing Date a certificate of an authorized officer of Purchaser confirming that the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

(d) Certain Documents. Purchaser shall have delivered, or caused to be delivered, to the Sellers all of the items set forth in Section 2.5.

7.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing.

## ARTICLE VIII
## TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing only in accordance with this Section 8.1, and in no other matter:

(a) by the mutual written consent of CTI (on behalf of the Sellers) and Purchaser;

(b) by written notice of either Purchaser or CTI (on behalf of the Sellers) to the other, if there is in effect any Law or Order enacted or issued by a Governmental Body of competent jurisdiction that restrains, enjoins, declares unlawful or otherwise prohibits the consummation of the Closing or declaring unlawful the Transactions, and such Law or Order has become final, binding and non-appealable; provided that no Party may terminate this Agreement under this Section 8.1(b) if the issuance of such Order was caused by such Party's (or, in the case of CTI, any other Seller's) failure to perform any of its obligations under this Agreement;

(c) by written notice of either Purchaser or CTI (on behalf of the Sellers), if the Closing shall not have occurred on or before the date that is four (4) months following the date hereof (the "Outside Date") (or such later date as provided in Section 10.12); provided that if as of

the Outside Date any of the conditions set forth in Section 7.1(a), or Section 7.1(b) or if, in the case of Section 7.1(b), the prohibition or restraint relates to or arises under any Antitrust Law have not been satisfied but all other conditions set forth in Sections 7.2 and 7.3 shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but provided that such conditions shall then be capable of being satisfied if the Closing were to take place on such date), then the Outside Date shall be automatically extended to June 30, 2024 and such date shall become the Outside Date for purposes of this Agreement; provided, further, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by such Party's (or, in the case of CTI, any other Seller's) failure to perform any of its obligations under this Agreement;

(d) by written notice from CTI (on behalf of the Sellers) to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied; provided that (i) if such breach is curable by Purchaser (other than a breach or failure by Purchaser to close when required pursuant to Section 2.3) then CTI (on behalf of the Sellers) may not terminate this Agreement under this Section 8.1(d) unless such breach has not been cured by the date which that the earlier of (A) two (2) Business Days prior to the Outside Date and (B) thirty (30) days after CTI notifies Purchaser of such breach and (ii) CTI's (on behalf of the Sellers) right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to CTI at any time that any Seller is in breach of, any covenant, representation or warranty hereunder such that the conditions in Section 7.2 cannot be satisfied;

(e) by written notice from Purchaser to CTI (on behalf of the Sellers), upon a breach of any covenant or agreement on the part of the Sellers, or if any representation or warranty of the Sellers will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied; provided that (i) if such breach is curable by the Sellers (other than a breach or failure by Sellers to close when required pursuant to Section 2.3) then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) thirty (30) days after Purchaser notifies CTI (on behalf of the Sellers) of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to Purchaser at any time that Purchaser is in breach of, any covenant, representation or warranty hereunder such that the conditions in Section 7.3 cannot be satisfied;

(f) by written notice from CTI (on behalf of the Sellers) to Purchaser, if (i) all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but provided that such conditions shall then be capable of being satisfied if the Closing were to take place on such date) or waived, (ii) CTI (on behalf of the Sellers) has delivered written notice to Purchaser that it is ready, willing and able to complete the Closing on such date and throughout the four (4) Business Day period following delivery of such notice and (iii) Purchaser fails to complete the Closing at the time required by Section 2.1;

(g) by written notice from CIT (on behalf of Sellers) to Purchaser, if any Seller or the board of directors (or similar governing body) of any Seller determines in good faith after

consultation with its financial advisors and outside counsel that that proceeding with the Transaction or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties under the applicable Law;

(h) by written notice of either Purchaser or CTI (on behalf of the Sellers), if (i) any Seller enters into one or more Alternative Transactions with one or more Persons other than Purchaser, (ii) the Bankruptcy Court approves an Alternative Transaction, or (iii) the Sellers consummate an Alternative Transaction;

(i) by written notice from Purchaser to CTI (on behalf of the Sellers), if any of the Bankruptcy Cases is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the affairs or reorganization of any of the Sellers is appointed in any of the Bankruptcy Cases;

(j) by written notice from Purchaser to CTI (on behalf of the Sellers), if (i) Sellers withdraw or seek to withdraw any motion seeking approval of this Agreement and the Transactions or file any motion seeking approval of an Alternative Transaction, (ii) the Confirmation Order, in form and substance satisfactory to the Purchaser, is not entered by the Bankruptcy Court on or before November 17, 2023, (iii) the CCAA Orders, in form and substance satisfactory to the Purchaser, are not entered by the CCAA Court on or before November 24, 2023, or (iv) an Order, in form and substance satisfactory to Purchaser, approving the Breakup Fee and the Expense Reimbursement is not entered by the Bankruptcy Court on or before November 17, 2023; or

(k) by written notice from Purchaser to CTI (on behalf of the Sellers), if (i) any of the Acquired Entities commences a voluntary case under any Bankruptcy Law, consents to the entry of an Order for relief in an involuntary case under any Bankruptcy Law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official for an Acquired Entity or all or any portion of its assets or property or effects any assignment for the benefit of creditors, or (ii) any court of competent jurisdiction enters a decree or Order for relief in respect of any Acquired Entity in any involuntary case under any Bankruptcy Law or for the appointment of a receiver, liquidator, assignee, custodian, trustee or similar official for an Acquired Entity or any of its property or assets or for any winding up or liquidation of an Acquired Entity, in each case without the prior written consent of Purchaser.

8.2 Effect of Termination.

(a) In the event of termination of this Agreement in accordance with Article VIII, this Agreement shall forthwith become null and void and no Party or any of its partners, officers, directors, managers, equityholders or representatives will have any Liability under this Agreement; provided that Section 2.2, Section 6.2(b), Section 6.14(d), this Section 8.2, and, to the extent necessary to effectuate the foregoing enumerated provisions, Article X and Article XI, shall survive any such termination; provided further that nothing in this Section 8.2 will be deemed to interfere with the Sellers' rights to retain the Deposit to the extent provided in Section 2.2(b).

(b) Notwithstanding Section 8.2(a), if this Agreement is terminated pursuant to Sections 8.1(e), 8.1(g), 8.1(h), 8.1(i), 8.1(j) or 8.1(k) (or by the Sellers pursuant to Section 8.1(c)

in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Sections 8.1(e), 8.1(h), 8.1(i), 8.1(j) or 8.1(k)), then CTI (on behalf of the Sellers) shall pay (or cause to be paid) to Purchaser by wire transfer of immediately available funds within three (3) Business Days following such termination of this Agreement an amount equal to the reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by Purchaser or its Affiliates in connection with the negotiation, diligence, execution, performance and enforcement of this Agreement, which amount shall not exceed $7,750,000 ("Expense Reimbursement").

(c) Notwithstanding Section 8.2(a), in consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of the Sellers, if this Agreement is terminated pursuant to Sections 8.1(e), 8.1(g), 8.1(h), 8.1(i), 8.1(j)(i) or 8.1(k) (or by the Sellers pursuant to Section 8.1(c) in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Sections 8.1(e), 8.1(h), 8.1(i), 8.1(j)(i) or 8.1(k)), CTI (on behalf of the Sellers) shall pay (or cause to be paid) to Purchaser (or, at the option of Purchaser, a Designee) a break-up fee in an amount equal to $23,250,000 (the "Breakup Fee"); provided that the Breakup Fee shall be payable by wire transfer of immediately available funds within three (3) Business Days of the termination of this Agreement, or, solely in the event this Agreement is terminated pursuant to Sections 8.1(g), 8.1(h) or 8.1(j)(i) because of an Alternative Transaction, by wire transfer of immediately available funds contemporaneously with the closing of such Alternative Transaction (including any Alternative Transaction that includes a credit bid under Section 363(k) of the Bankruptcy Code or any other form of equalization or non-cash consideration). Each of the Parties acknowledges and agrees that (i) the agreements contained in this Section 8.2 are an integral part of this Agreement, (ii) in the absence of CTI's (on behalf of the Sellers) obligations to make these payments Purchaser would not have entered into this Agreement, (iii) the Breakup Fee and the Expense Reimbursement shall constitute allowed superpriority administrative expense claims pursuant to sections 105(a), 364(c)(1), 503(b), and 507(a)(2) of the Bankruptcy Code with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code and such allowed superpriority administrative expense claim shall be superior in priority to all other similarly situated claims asserted or allowed in the Bankruptcy Cases, and (iv) the Expense Reimbursement and the Breakup Fee are not a penalty, but rather represent liquidated damages in a reasonable amount that will reasonably compensate Purchaser in the circumstances in which the Expense Reimbursement or Breakup Fee, as applicable, is payable for the efforts and resources expended and opportunities foregone by Purchaser while negotiating and pursuing this Agreement and in reasonable reliance on this Agreement and on the reasonable expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision. Each Seller acknowledges and agrees that such Seller shall be jointly and severally liable for the entire Breakup Fee and the Expense Reimbursement amounts payable by CTI (on behalf of the Sellers) pursuant to this Agreement. The obligations of the Sellers to pay the Breakup Fee or the Expense Reimbursement shall survive the termination of this Agreement.

(d) Subject in all cases to Section 10.12, prior to the Closing, in the event of any breach by Seller of this Agreement, the sole and exclusive monetary remedy of Purchaser shall be to terminate this Agreement in accordance with Section 8.1 and, if applicable, to receive the Expense Reimbursement or the Breakup Fee, as applicable, in accordance with Section 8.2.

(e) Subject in all cases to Section 10.12, the Sellers acknowledge and agree that, prior to the Closing, the Sellers' right (if any) to retain the Deposit pursuant to Section 2.2(b) shall be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of the Sellers against Purchaser and any of its former, current or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents or any of the Debt Financing Related Parties for any Liability, damage or other loss resulting from the termination of this Agreement, breach of any representation, warranty, covenant or agreement contained herein or the failure of the Transactions to be consummated, and prior to the Closing, none of the Sellers nor any of their Affiliates shall have any other remedy or cause of action against Purchaser or any of its former, current or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents or any of the Debt Financing Related Parties, and, prior to the Closing, none of the foregoing shall have any further Liability or obligation, in each case, arising out of or relating to this Agreement or the Transactions. For the avoidance of doubt, prior to the Closing, but subject to Section 10.12, the maximum Liability of Purchaser under this Agreement shall not exceed the Deposit, other than any amounts payable by Purchaser pursuant to Section 6.14(d).

## ARTICLE IX
## TAXES

9.1 Transfer Taxes.

(a) Any sales, consumption, use, excise, GST/HST, value added, registration, real property, transfer, deed, fixed asset, stamp, documentary stamp or other similar Taxes and recording charges (including all related interest, penalties, and additions to any of the foregoing) payable solely by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the Transactions and imposed under applicable Law in connection with the Transactions (but excluding any Tax on, based upon or measured by, net income, receipts, gains or profits) (collectively, the "Transfer Taxes") shall be borne one hundred percent (100%) by Purchaser, and Purchaser shall timely file all required Tax Returns related to, any Transfer Taxes with the appropriate Taxing Authority.

(b) Purchaser shall prepare all necessary Tax Returns and other documentation in connection with the payment or administration of any Transfer Taxes, and, at the request of Purchaser, each Seller (or the applicable Affiliate of any Seller) shall execute all Tax Returns and other documents as may reasonably be required to be provided or filed in connection therewith. Each of the Sellers, Purchaser and their respective Affiliates shall use commercially reasonable efforts (i) to cooperate to ensure that all Tax Returns related to Transfer Taxes are timely filed and (ii) to mitigate the imposition of any Transfer Taxes in a manner consistent with this Agreement, including any claim for exemption or exclusion from the application or imposition of any such Transfer Taxes (whether by application of Section 1146(a) of the Bankruptcy Code or otherwise). If the Parties agree that the election is available in respect of the disposition of Acquired Assets by a Canadian Seller, then, at Purchaser's request, such Canadian Seller and Purchaser will complete and sign on or before the Closing Date, a joint election under subsection 167(1) of the ETA and under any corresponding provision of provincial Law, to have the sale of the Canadian Assets take place on a GST/HST free basis under the ETA and, if applicable, the corresponding provision of provincial Law. Purchaser will file the election or elections with the appropriate Governmental

Body in Canada within the time prescribed under the ETA or, if applicable, other applicable Tax Law in Canada.

(c) If any of the Canadian Sellers and Purchaser do not jointly elect under subsection 167(1) of the ETA and under any corresponding provincial Law, at Purchaser's request, such Canadian Seller shall issue an invoice to Purchaser and such invoice shall include all of the information required under subsection 169(4) of the ETA and the corresponding provision under provincial Law.

(d) If required under section 187 of the *Provincial Sales Tax Act* (British Columbia) or a corresponding provision of the Law of another Canadian province, a Seller shall obtain and provide to Purchaser on or prior to Closing, the applicable certificate issued by the appropriate Taxing Authority indicating that the Seller has paid all provincial sales Tax owing under the *Provincial Sales Tax Act* (British Columbia) or the corresponding provincial sales Tax or retail sales Tax Law of another province in respect of its business up to the Closing Date (a "Clearance Certificate"). If an applicable Seller does not provide to Purchaser a Clearance Certificate that is required to be obtained under applicable Law prior to Closing, such applicable Seller will, as promptly as possible following Closing, provide such Clearance Certificate to Purchaser.

(e) Each Canadian Seller shall, if requested by Purchaser, jointly elect with Purchaser in prescribed form and within the prescribed time under section 22 of the ITA and the corresponding provisions of applicable provincial Tax statutes in respect of any accounts receivable transferred by such Canadian Seller pursuant to this Agreement. Each such Canadian Seller and Purchaser agrees to execute and file all necessary documents and instruments to give effect to the elections referred to in this Section 9.1(e).

9.2 Allocation of Purchase Price. For all applicable Tax purposes, Purchaser, Sellers, and their respective Affiliates shall allocate the Purchase Price (and any Assumed Liabilities or other amounts treated as part of the Purchase Price for applicable Tax purposes) among the Acquired Assets, which, in the case of any allocation for U.S. federal (and applicable state and local) income Tax purposes, shall be consistent with the requirements of Section 1060 of the Tax Code and the regulations promulgated thereunder and any similar provision of applicable Tax Law and in accordance with Section 1.5(i)(vi), Schedule 9.2 and the Intended Tax Treatment. To the extent permitted by applicable Law, (i) the amount payable in respect of any Acquired Entity in respect of which an election is made pursuant to Section 338(g) of the Tax Code shall be subject to a separate Section 1060 allocation and, (ii) without limitation of the foregoing, the amounts paid to Sellers by any Designee in respect of the Acquired Assets and Assumed Liabilities transferred to such Designee shall be subject to one or more separate Section 1060 allocations in respect of the set of Acquired Assets purchased by each such Designee. As soon as commercially practicable, but no later than forty-five (45) days following the determination of the final Purchase Price pursuant to Section 2.6, Purchaser shall provide a proposed allocation (the "Allocation") to CTI setting forth the allocation of the Purchase Price (and other amounts treated as part of the Purchase Price for applicable Tax purposes) among the Acquired Assets for Sellers' review and comment. All reasonable comments provided by CTI to Purchaser with respect to the draft Allocation shall be considered by Purchaser in good faith, and the Parties shall negotiate in good faith to resolve any dispute with respect to any changes proposed by CTI with respect to the Allocation. Sellers

and Purchaser acknowledge and agree that a preliminary Allocation may be necessary on a timeframe that is faster than the timeframe set forth above in order to comply with applicable Transfer Tax and withholding Tax obligations, and the Sellers and Purchaser shall cooperate in good faith to agree upon a preliminary Allocation for such purposes. If any item on the Allocation is disputed by a Seller in good faith, the Parties shall negotiate in good faith to resolve any such dispute prior to the Closing Date. If the Parties cannot resolve any disputed item, the item in question shall timely be referred to, and resolved by, the Independent Accountant in accordance with the procedures set forth in Section 2.6(b), *mutatis mutandis*. The Parties and their respective Affiliates shall file all Tax Returns in accordance with the Allocation (as finally agreed upon between the Parties under this Section 9.2) and shall not take any Tax related action inconsistent therewith, in each case, unless otherwise required by a "determination" within the meaning of section 1313(a) of the Tax Code and analogous provisions of applicable Tax Law.

9.3 Cooperation.

(a) Purchaser and Sellers shall reasonably cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns, and any Action, audit, litigation, or other proceeding with respect to Taxes, in the review of any Applicable Seller Prepared Return or Straddle Period Return under Section 9.4(a) and Section 9.4(b), and in connection with any dispute resolution relating to an Applicable Seller Prepared Return or Straddle Period Return under Section 9.4(c). In connection therewith, each Party shall provide the other Party and its Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, and other documents (for the purpose of examining and copying) relating to Taxes of, or with respect to, the Acquired Assets, the Acquired Entities, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities, in each case, with respect to periods or occurrences prior to the Closing Date, and reasonable access, during normal business hours, and upon reasonable advance notice, to employees, officers, Advisors, accountants, offices and properties of such other Party for the purpose of better understanding the books and records. Unless otherwise consented to in writing by Purchaser, Sellers will not, for a period ending upon the earlier of (i) of three (3) years following the Closing Date and (ii) the closing of the Bankruptcy Case, destroy, alter or otherwise dispose of any of Tax books and records without first offering to surrender to the Purchaser such Tax books and records or any portion thereof that Sellers may intend to destroy, alter or dispose of.

(b) Sellers shall, (i) if requested in writing by Purchaser, within sixty (60) days following the Closing, make, to the extent permitted by Law, an election to close the taxable year of any Acquired Entity formed outside of the United States as of the end of the day on the Closing Date, in accordance with the procedures set forth in Treasury Regulations Section 1.245A-5(e)(3)(i) and (ii) if requested in writing by Purchaser within thirty (30) days following the Closing, make, to the extent permitted by Law, a "check the box" election to treat any of the Acquired Entities formed outside of the United States as a disregarded entity for U.S. federal income tax purposes effective prior to the Closing; provided that no "check the box" election shall be made to the extent it would reasonably be expected to have a non-*de minimis* and adverse effect on Sellers without the prior written consent of Sellers (such consent not to be unreasonably withheld, delayed or conditioned).

(c) The Sellers shall cooperate with Purchaser in providing all information requested by Purchaser in respect of any applicable Seller's GST/HST registration, and each other registration for each provincial sales Tax statute for which such Seller is registered.

9.4 Preparation of Tax Returns and Payment of Taxes.

(a) Except as otherwise provided by Section 9.1, Sellers shall prepare and timely file, in a manner consistent with past practice except as otherwise required by applicable Law, (i) all Tax Returns with respect to the Acquired Assets for any Tax period ending on or before the Closing Date (other than Tax Returns of the Acquired Entities that are due, including applicable extension, after the Closing Date) (the "Applicable Seller Prepared Returns") and (ii) all income Tax Returns of Sellers. Sellers shall provide Purchaser with a draft of all Applicable Seller Prepared Returns at least thirty (30) days prior to the filing of any such Tax Return to the extent such Applicable Seller Prepared Returns relate to any Acquired Assets or any Assumed Liability. Except if referred to dispute resolution under Section 9.4(c), Sellers shall incorporate any changes reasonably requested by Purchaser with respect to such Tax Returns (for the avoidance of doubt, any changes the absence of which could adversely affect Purchaser, including in the determination of the final Purchase Price pursuant to Section 2.6, shall be considered reasonably requested by Purchaser). Sellers shall be responsible for paying any Taxes reflected on any Tax Return that Sellers are obligated to prepare and file under this Section 9.4(a) other than any Assumed Liability and Purchaser shall be responsible for paying any Taxes reflected on any such Tax Return that is an Assumed Liability.

(b) Purchaser shall prepare and timely file (i) all Tax Returns with respect to the Acquired Assets (including the Acquired Entities) for any Tax period beginning before and ending after the Closing Date and (ii) all Tax Returns of the Acquired Entities for taxable periods ending on or before the Closing Date that are due, including applicable extensions, after the Closing Date. Purchaser shall prepare such Tax Returns consistent with past practice except as otherwise required by applicable Law, and shall provide Sellers or their successors in rights, as applicable, with a draft of such Tax Returns at least thirty (30) days prior to the filing of any such Tax Return to the extent any Seller or its successor in rights could reasonably be expected to be liable for any such Taxes under this Agreement. Except if referred to dispute resolution under Section 9.4(c), Purchaser shall incorporate any changes reasonably requested by Sellers with respect to such Tax Returns (for the avoidance of doubt, any changes the absence of which could adversely affect Sellers, including in the determination of the final Purchase Price pursuant to Section 2.6, shall be considered reasonably requested by Sellers). Purchaser shall be responsible for paying any Taxes reflected on any Tax Return that Purchaser is obligated to prepare and file under this Section 9.4(b) to the extent constituting an Assumed Liability (including, for the avoidance of doubt, all such Taxes of the Acquired Entities).

(c) If any item on an Applicable Seller Prepared Return or a Tax Return prepared by Purchaser under Section 9.4(b) is disputed by the non-preparing party in good faith, the Parties shall negotiate in good faith to resolve any such dispute prior to the date on which the relevant Tax Return is required to be filed. If the Parties cannot resolve any disputed item, the item in question shall timely be referred to, and resolved by, the Independent Accountant in accordance with the procedures set forth in Section 2.6(b), *mutatis mutandis*. The preparing party shall, after prior reasonable consultation with the non-preparing party (or its designated successor), be

permitted to file the Tax Return as previously prepared (reasonably taking into account the non-preparing party's comments), and the relevant Tax Return shall thereafter be adjusted (or amended, if previously filed) to reflect its resolution under this Section 9.4(c).

(d) Purchaser shall not file any amendment to any previously filed Tax Return that has the effect of increasing any Tax that is payable or otherwise borne by Sellers. Purchaser shall be permitted to make an election under Section 338(g) of the Tax Code with respect to any or all of the Acquired Entities.

9.5 Tax Sharing Agreements. On or before the Closing Date, Sellers shall take all actions as may be necessary to terminate all Tax sharing agreements or arrangements (whether written or otherwise), if any, to which any Acquired Entity, on the one hand, and any Seller (or any Affiliate of any Seller that is not an Acquired Entity), on the other hand, are parties, in each case, in a manner such that after the applicable termination, no Acquired Entity will have any past, present, or future Liability thereunder.Straddle Period Allocations. Any Liability for Taxes attributable to a Straddle Period required to be apportioned under this Agreement shall be apportioned as follows: (a) the amount of property, ad valorem, intangible, and other periodic Taxes allocable to the pre-Closing portion of any Straddle Period shall be equal to (i) the amount of such Taxes for the entire Straddle Period multiplied by (ii) a fraction, the numerator of which is the number of calendar days during the Straddle Period that are in the pre-Closing portion of such Straddle Period and the denominator of which is the number of calendar days in the entire Straddle Period; and (b) all Taxes not allocated under clause (a) shall be allocated to the pre-Closing portion of any Straddle Period on the basis of a "closing of the books," as if such taxable period ended as of the end of the day on the Closing Date; provided that, exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period beginning after the Closing Date in proportion to the number of calendar days in each period; provided that, for the avoidance of doubt, nothing contained in this Section 9.6 shall be construed so as to cause an Assumed Liability to become an Excluded Liability or *vice versa*.

9.7 Tax Treatment. The Parties intend the Transactions to constitute "applicable asset acquisitions" (within the meaning of Section 1060(c) of the Tax Code) pursuant to which the Purchaser (or each of Purchaser and one or more of its Designees, with, for clarity, such Designee being treated as the direct "purchaser" in the "applicable asset acquisition") acquired the entirety of the "trade or business" (within the meaning of Section 1060 of the Tax Code) in respect of which the applicable Acquired Assets and Assumed Liabilities (including, for this purpose, in respect of the Leases subject to Section 1.5(i)) relate, including all "amortizable section 197 intangibles" (within the meaning of Treasury Regulations Section 1.197-2(d)), or rights to use or interests (including beneficial or other indirect interests) in such "amortizable section 197 intangibles" and that no interest in any such "amortizable section 197 intangibles" be treated as having been retained by the Sellers or their Affiliates (the "Intended Tax Treatment"). No Party shall take any position inconsistent with the Intended Tax Treatment on any Tax Return or otherwise, except as otherwise required by a final "determination" (within the meaning of Section 1313 of the Tax Code and analogous provisions of applicable Law).

## ARTICLE X
## MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance at or after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for the applicable statute of limitations plus sixty (60) days, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and the Seller Parties acknowledge and agree, on their own behalf, and with respect to Purchaser, and on behalf of the Purchaser Group that the agreements contained in this Section 10.1 require performance after the Closing to the maximum extent permitted by applicable Law and, if no term is specified, will survive the Closing for the applicable statute of limitations plus sixty (60) days. Purchaser on behalf of itself and the other members of the Purchaser Group hereby waives all rights and remedies with respect to any environmental, health or safety matters, including those arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or any other Environmental Laws, relating to this Agreement or the Transactions.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein (including Section 1.5, Section 1.7, Section 6.18 and Section 8.2), all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the Transactions will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that (a) all fees and expenses in connection with any filing or submission required under the HSR Act and the Antitrust Laws or other regulations set forth in Schedule 7.1 will be allocated pursuant to Section 6.4, (b) all Transfer Taxes will be allocated pursuant to Section 9.1 and (c) all Cure Costs will be allocated pursuant to Section 5.2.

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail upon confirmation of receipt or, if receipt is not confirmed, delivery by another method permitted by this Section 10.3, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

c/o Brookfield Asset Management Inc.
250 Vesey Street, 15th Floor
New York, New York 10281
Attention: Fred Day
Michael Rudnick
Email: fred.day@brookfield.com
michael.rudnick@brookfield.com

with a copy to (which shall not constitute notice):

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Edward T. Ackerman
Jacob A. Adlerstein
Brian S. Hermann
Email: eackerman@paulweiss.com
adlerstein@paulweiss.com
bhermann@paulweiss.com

Notices to Sellers:

Cyxtera Technologies, Inc.
2333 Ponce De Leon Blvd, Suite 900
Coral Gables, Florida 33134
Attention: Victor Semah, Chief Legal Counsel
E-mail: victor.semah@cyxtera.com

with copies to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Christopher Marcus, P.C.
Derek Hunter
Steve Toth
Email: christopher.marcus@kirkland.com
derek.hunter@kirkland.com
steve.toth@kirkland.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Confirmation Order, Sellers, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Cases or any successor Chapter 7 cases; provided that, subject to Section 1.7, neither this Agreement nor any of the rights or

obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and CTI (on behalf of the Sellers), and any attempted assignment or delegation without such prior written consent shall be null and void; provided further that Purchaser may, without the consent of the Sellers, assign all or any portion of its rights or obligations hereunder to any of the Debt Financing Sources pursuant to the terms of the Debt Financing for purposes of creating a security interest herein or otherwise assigning as collateral security in respect of the Debt Financing; provided further that Purchaser may, without the consent of the Sellers, assign all or any portion of its rights or obligations hereunder to a Designee in accordance with Section 1.7.

10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and CTI (on behalf of the Sellers) or (b) waived only in a writing executed by the Party (or, in the case of any Seller, CTI) against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

10.6 Third Party Beneficiaries. Except as otherwise expressly provided in Section 10.7, nothing expressed or referred to in this Agreement will be construed to give any Person other than (i) for purposes of Section 6.13, the directors and officers referred to therein; (ii) for purposes of Section 10.7, the Non-Party Affiliates, and (iii) the Parties hereto and such permitted assigns, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.7 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the other Transaction Agreement to which Purchaser or the Sellers are party, may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the "Contracting Parties"). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or Debt Financing Related Party to, any of the foregoing (the "Non-Party Affiliates"), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or Affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the other Transaction Agreements or based on, in respect of, or by reason of this Agreement or the other Transaction Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance

upon any Non-Party Affiliates with respect to the performance of this Agreement or the other Transaction Agreements to which the Sellers are party or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the other Transaction Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 10.7 and Section 10.21. Nothing in this Agreement (including this Section 10.7 or Section 10.12(b)) will limit the rights of the parties to the Equity Commitment Letter (or CTI as an intended third party beneficiary of the Equity Commitment Letter solely to the extent set forth therein) but subject to the terms and conditions thereof.

10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction, unless the severance of any such provision from the remainder of this Agreement would change the economic substance of the Agreement as a whole in a manner that is materially adverse to any Party (and such change is not waived in writing by such affected Person (or, in the case of any Seller, CTI)); provided that the economic substance of the Agreement as a whole shall be deemed to be affected in a manner materially adverse to the Parties if Section 8.2(c) or Section 10.12 is held to be prohibited or invalid.

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; provided that each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules to the extent the relevance of such disclosure to such other section of the Schedules or such other representation or warranty set forth in this Agreement is reasonably apparent on the face of such disclosure. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Schedules or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in

the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of Contract.

10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

10.12 Specific Performance.

(a) The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the Transactions. It is accordingly agreed that (i) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (ii) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Sellers pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any Action, in each case in accordance with Section 10.13, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (x) for the period during which such Action is pending, plus ten (10) Business Days or (y) by such other time period established by the court presiding over such Action, as the case may be. In no event will this Section 10.12 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty made by any Seller herein.

(b) Notwithstanding anything herein to the contrary, it is hereby acknowledged and agreed that the Sellers shall be entitled to an injunction or injunctions, specific performance or other equitable relief, to cause Purchaser to cause the Equity Financing to be funded or to consummate the Closing if, and only if, (i) Purchaser is required to complete the Closing pursuant to Section 2.3 and Purchaser fails to complete the Closing by the date the Closing is required to have occurred pursuant to Section 2.3, and (ii) the Sellers have confirmed in writing to Purchaser that, if specific performance is granted and the Equity Financing is funded, then the Closing will occur substantially simultaneously therewith.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action of any kind whatsoever, including a counterclaim, cross-claim, or defense, regardless of the legal theory under which any Liability or obligation may be sought to be imposed, whether sounding in contract or in tort or under statute, or whether at law or in equity, or otherwise under any legal or equitable theory, that may be based upon, arising out of, or related to this Agreement or the negotiation, execution, or performance of this Agreement or the Transactions and any questions concerning the construction, interpretation, validity and enforceability of this Agreement (each, an "Agreement Dispute") brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Court of Chancery of the State of Delaware (or if such court lacks jurisdiction, any other state or federal court sitting in the State of Delaware) (the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any Agreement Dispute. Each of the Parties agrees not to commence any Agreement Dispute except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Courts, and no Party will file a motion to dismiss any Agreement Dispute filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of any Agreement Dispute. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and any Agreement Dispute will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY AGREEMENT DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY

AGREEMENT DISPUTE. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH AGREEMENT DISPUTE WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY AGREEMENT DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Right to Set-Off. Purchaser, on its own behalf and on behalf the Purchaser Group and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment or similar rights that Purchaser, any member of the Purchaser Group or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement.

10.16 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a.PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party hereto or thereto or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such Contract will raise the use of a.PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

10.17 Publicity. No Party (including for avoidance of doubt, any Designee) shall, and each Party shall cause its Affiliates not to, issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of Purchaser and CTI, which approval will not be unreasonably conditioned, withheld or delayed, unless, in the reasonable judgment of Purchaser (or its Designee) or CTI (on behalf of the Sellers), as applicable, disclosure is otherwise required of such Party (its Affiliates or any Designee) by or advisable under applicable Law or by the Bankruptcy Court or CCAA Court with respect to filings to be made with the Bankruptcy Court or CCAA Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser, any Designee or any Seller (or their respective Affiliates) lists securities or is otherwise consistent with customary reporting obligations of Purchaser or its Designee (or their respective Affiliates); provided that the Party

intending to make such release shall use its reasonable efforts consistent with such applicable Law or Bankruptcy Court or CCAA Court requirement, to the extent reasonably practicable under the circumstances, to consult with each of the other Parties (or, in the case of the Sellers, CTI) with respect to the from and text thereof. Notwithstanding any of the foregoing, Purchaser (or its applicable Designee) shall at all times be entitled to provide (in a non-public manner) general information concerning the Transactions to its direct or indirect investors, limited partners, prospective investors, Advisors or the Debt Financing Related Party, for the purpose of fundraising, marketing or reporting or informational activities, in each case, without obtaining the prior approval of any other Party, so long as such Persons have an obligation to maintain the confidentiality of such information and Purchaser (or its applicable Designee) shall be liable for their failure to do so. No Party (or its applicable Designee) shall be required to obtain any prior written approval or otherwise comply with this Section 10.17 to the extent any proposed release or announcement is consistent with and not containing more non-public information than has previously been made public without breach of the obligations under this Section 10.17. All publicity concerning the Transactions shall be jointly planned, coordinated, approved and released by the Parties; provided, however, that nothing herein shall prohibit either Party (or a Designee) from making any press release (other than the initial press release) or disclosure as may be permitted pursuant to this Section 10.17, so long as such press release or public disclosure is (a) to the extent reasonably practicable under the circumstances, jointly coordinated and discussed by the Parties (acting reasonably and in good faith) and (b) consistent with and no more expansive than prior disclosures made in accordance with Section 10.17. Notwithstanding the foregoing, the initial press release in respect of the Transactions shall be issued on the date hereof and shall be in the form mutually agreed by the Parties in writing.

10.18 Bulk Sales Laws. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Encumbrances in the Acquired Assets including any liens or claims arising out of the bulk transfer Laws except Permitted Post-Closing Encumbrances, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Confirmation Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the Transactions.

10.19 Release.

(a) Effective upon the Closing Date, each Seller on behalf of itself and its Affiliates and its respective directors, officers, control persons (as defined in Section 15 of the Securities Act or Section 20 of the Exchange Act), members, employees, agents, attorneys, financial advisors, consultants, legal representatives, shareholders, partners, estates, successors and assigns solely in their capacity as such, and any of their respective agents, attorneys, financial advisors, legal advisors, Affiliates, directors, managers, officers, control persons, shareholders, members or employees, in each case, solely in their capacity as such (each a "Related Party" and collectively, the "Related Parties") acknowledges that it has no claim, counterclaim, setoff, recoupment, Action or cause of action of any kind or nature whatsoever against Purchaser or its Related Parties that directly or indirectly arises out of, is based upon, or is in any manner connected with any transaction, event, circumstances, action, failure to act or occurrence of any sort or type in connection with the Transactions, the Acquired Assets or Assumed Liabilities, including any approval or acceptance given or denied, whether known or unknown, which occurred, existed, was

taken or begun prior to the consummation of the Transactions (any and all such direct or derivative claims, collectively, the "Seller Released Claims"); and, should any Seller Released Claims nonetheless exist, each Seller on behalf of itself and its Related Parties hereby (i) releases and discharges Purchaser and its Related Parties from any Liability whatsoever on such Seller Released Claims that directly or indirectly arises out of, is based upon, or is in any manner connected with any such transaction, event, circumstances, action, failure to act or occurrence of any sort or type, including any approval or acceptance given or denied, whether known or unknown, which occurred, existed, was taken or begun prior to the consummation of the Transactions, and (ii) releases, remises, waives and discharges all such Seller Released Claims against Purchaser and its Related Parties; provided that nothing herein shall release Purchaser or a Seller of its obligations under this Agreement or the other Transaction Agreements.

(b) Effective upon the Closing Date, Purchaser on behalf of itself and its Affiliates acknowledges that it has no claim, counterclaim, setoff, recoupment, Action or cause of action of any kind or nature whatsoever against any Seller that directly or indirectly arises out of, is based upon, or is in any manner connected with any transaction, event, circumstances, action, failure to act or occurrence of any sort or type in connection with the Transactions, the Acquired Assets or Assumed Liabilities, including any approval or acceptance given or denied, whether known or unknown, which occurred, existed, was taken or begun prior to the consummation of the Transactions (any and all such direct or derivative claims, collectively, the "Purchaser Released Claims"); and should any Purchaser Released Claim nonetheless exist, each Purchaser on behalf of itself and its Affiliates hereby (i) releases and discharges each Seller from any Liability whatsoever on Purchaser Released Claims that directly or indirectly arises out of, is based upon, or is in any manner connected with any such transaction, event, circumstances, action, failure to act or occurrence of any sort or type, including any approval or acceptance given or denied, whether known or unknown, which occurred, existed, was taken or begun prior to the consummation of the Transactions contemplated hereunder, and (ii) releases, remises, waives and discharges all such Purchaser Released Claims against each Seller; provided that nothing herein shall release a Purchaser or a Seller of its obligations under this Agreement or the other Transaction Agreements.

(c) Without limiting in any way the scope of the release contained in this Section 10.19 and effective upon the Closing Date, each Seller, to the fullest extent allowed under applicable Law, hereby waives and relinquishes all statutory and common law protections purporting to limit the scope or effect of a general release, whether due to lack of knowledge of any claim or otherwise, including, waiving and relinquishing the terms of any Law which provides that a release may not apply to material unknown claims. Each Seller hereby affirms its intent to waive and relinquish such unknown claims and to waive and relinquish any statutory or common law protection available in any applicable jurisdiction with respect thereto.

10.20 Sellers' Representative. Each Party agrees that CTI has the power and authority to unilaterally act on behalf of all or any of the Sellers for the purposes of this Agreement and the other Transaction Agreements. Such power will include the power to make all decisions, actions, Consents and determinations on behalf of the Sellers, including to make any waiver of any Closing condition or agree to any amendment to this Agreement. No Seller shall have any right to object, dissent, protest or otherwise contest the same. Purchaser shall be entitled to rely on any action or omission taken by CTI on behalf of the Sellers. Purchaser and its Affiliates may rely exclusively,

without independent verification or investigation, upon all decisions, communications or writings made, given or executed by CTI on behalf of the other Seller in connection with this Agreement, the other Transaction Agreements and the Transactions. Purchaser shall be entitled to disregard any decisions, communications or writings made, given or executed by any Seller in connection with this Agreement, the other Transaction Agreements and the Transactions unless the same is made, given or executed by CTI on behalf of the Sellers. Notwithstanding anything to the contrary set forth herein, Purchaser and its Affiliates shall not be liable for any Liability to any Person, including any Seller, for any action taken or not taken by CTI on behalf of the Sellers or for any act or omission taken or not taken in reliance upon the actions taken or not taken or decisions, communications or writings made, given or executed by CTI on behalf of the Sellers.

10.21 Debt Financing Sources. Notwithstanding anything in this Agreement to the contrary, each Seller on behalf of itself, its Subsidiaries and each of its controlled Affiliates hereby: (a) agrees that any proceeding, whether in law or in equity, whether in contract or in tort or otherwise, involving the Debt Financing Related Parties, arising out of or relating to, this Agreement, the Debt Financing or any of the agreements entered into in connection with the Debt Financing or any of the Transactions or thereby or the performance of any services thereunder shall be subject to the exclusive jurisdiction of any federal or state court in the Borough of Manhattan, New York, New York, so long as such forum is and remains available, and any appellate court thereof and each party hereto irrevocably submits itself and its property with respect to any such proceeding to the exclusive jurisdiction of such court, (b) agrees that any such proceeding shall be governed by the Laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the Laws of another state), except as otherwise provided in the applicable definitive document relating to the Debt Financing, (c) agrees not to bring or support or permit any of its controlled Affiliates to bring or support any proceeding of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Debt Financing Related Party in any way arising out of or relating to, this Agreement, the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder in any forum other than any federal or state court in the Borough of Manhattan, New York, New York, (d) agrees that service of process upon the Sellers or their controlled Affiliates in any such proceeding shall be effective if notice is given in accordance with this Section 10.21, (e) irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such proceeding in any such court, (f) knowingly, intentionally and voluntarily waives to the fullest extent permitted by applicable law trial by jury in any proceeding brought against the Debt Financing Related Parties in any way arising out of or relating to, this Agreement, the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, (g) agrees that none of the Debt Financing Related Parties will have any Liability to the Seller or any of its Affiliates (for the avoidance of doubt, in each case, other than (x) Purchaser and its permitted assigns in connection with the commitment letter governing the Debt Financing or the definitive agreements governing the Debt Financing and (y) Purchaser and its Subsidiaries following the Closing) relating to or arising out of this Agreement, the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, whether in law or in equity, whether in Contract or in tort or otherwise (except, after giving effect to the Closing, to the Acquired Entities in accordance with the definitive agreements entered into with respect to the Debt Financing) and (h) agrees that Debt Financing Sources are express third party beneficiaries of, and may enforce, any of the provisions of this Section 10.21, and that such

provisions of this Section 10.21 and the definitions of "Debt Financing Sources" and "Debt Financing Related Parties" (and any other provisions of this Agreement to the extent a modification thereof would directly affect the substance of any of the foregoing) shall not be amended in any way adverse to the Debt Financing Related Parties without the prior written consent of the Debt Financing Sources. This Section 10.21 shall, with respect to the matters referenced herein, supersede any provision of this Agreement to the contrary. Notwithstanding the foregoing, nothing in this Section 10.21 shall in any way limit or modify (i) the rights and obligations of Purchaser and its Affiliates under this Agreement or (ii) any Debt Financing Related Parties' obligations to, and the corresponding rights in connection therewith of, Purchaser or any of their Affiliates (following the Closing, including the Acquired Entities) under the commitment letter governing the Debt Financing or the definitive agreements governing the Debt Financing.

## ARTICLE XI
## ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

11.1 Certain Definitions.

(a) "Action" means any action, claim (including a counterclaim, cross-claim, or defense), complaint, grievance, summons, suit, litigation, arbitration, third-party mediation, audit, or proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, examination or investigation, of any kind whatsoever, regardless of the legal theory under which such Liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body.

(b) "Adjustment Amount" means (a) the Working Capital Overage, if any, minus (b) the Working Capital Underage, if any; plus (c) the Cash Amount; plus (d) the Factoring Facility Payoff Amount.

(c) "Adjustment Escrow Amount" means thirty million United States dollars ($30,000,000).

(d) "Advisors" means, with respect to any Person as of any relevant time, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

(e) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person; provided that any "portfolio company" (as such term is commonly understood in the private equity industry) of any investment fund affiliates of any Person (and any investment fund affiliates of any Person) shall not be considered an "Affiliate" of such Person. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, affairs and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, the Acquired Entities will be Affiliates of Sellers until Closing and Affiliates of Purchaser after Closing.

(f) "Aggregate DLR Consideration Amount" means the sum of (i) the UK Consideration Payment, (ii) the Germany Consideration Payment, and (iii) the Singapore Consideration Payment, in each case, to the extent applicable.

(g) "AlixPartners" means AlixPartners, LLP.

(h) "Alternative Transaction" means (i) any investment in, financing of, capital contribution or loan to or restructuring or recapitalization of Sellers or any of their respective direct or indirect Subsidiaries (including any exchange of all or a substantial portion of Sellers' or any of their respective Affiliates' outstanding debt obligations for equity securities of Sellers or any of their respective Affiliates), (ii) any merger, consolidation, share exchange or other similar transaction to which Sellers or any of their respective Affiliates is a party that has the effect of transferring, directly or indirectly, any non-*de minimis* portion of the Acquired Assets, or any issuance, sale or transfer of Equity Interests in, Sellers or the Acquired Entities, (iii) any direct or indirect sale of any non-*de minimis* portion of the Acquired Assets of, or any issuance, sale or transfer of Equity Interests in, Sellers or the Acquired Assets or (iv) any other transaction, including a plan of liquidation or agreement with a liquidation firm (or consortium) for the orderly liquidation of the Sellers, all or any non-*de minimis* portion of the Acquired Assets (other than any wind-down or similar plan or transaction or dismissal with respect to the sale of Excluded Assets) or reorganization (in any jurisdiction, whether domestic, foreign, international or otherwise), in each instance that transfers or vests ownership of, economic rights to, or benefits in any portion of the Acquired Assets to any party other than Purchaser or a Designee.

(i) "Anti-Corruption Laws" means the United States Foreign Corrupt Practices Act, the U.K. Bribery Act, any national and international Law enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, or any other applicable anti-corruption or anti-bribery Law.

(j) "Antitrust Law" means the Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914, and all other Laws, in any jurisdiction, whether domestic or foreign, in each case that are designed or intended to (i) prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition, or the creation or strengthening of a dominant position through merger or acquisition, or (ii) restrict, govern, control or regulate foreign investment or participation, including foreign direct investment (FDI), and similar Laws (expressly excluding CFIUS).

(k) "Auction" shall have the meaning ascribed to such term in the Bidding Procedures Order.

(l) "Avoidance Actions" means any and all avoidance, recovery, subordination, preference, transfer at undervalue, or other claims, Actions, or remedies which any of the Debtors under the Bankruptcy Case, the Debtors, their estates in the Bankruptcy Cases, or any other appropriate parties in interest have asserted or may assert under sections 502, 510, 542, 544, 545, or 547 through 553 of the Bankruptcy Code or under similar or related state, federal or foreign statutes and common law.

(m) "Bankruptcy Law" means the Bankruptcy Code, CCAA, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or other similar debtor relief Laws of the United States or any other applicable jurisdiction from time to time in effect.

(n) "Bidding Procedures Order" means the Bankruptcy Court's *Order (I) Approving the Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 180].

(o) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York or Toronto, Ontario, Canada are authorized or required by Law to be closed.

(p) "Business Employee" means each employee of any of the Sellers or any Acquired Entity.

(q) "Canadian Assets" means the Acquired Assets of the Canadian Sellers being purchased by the Purchaser pursuant to this Agreement.

(r) "Canadian Sellers" means Cyxtera Canada, LLC, Cyxtera Communications Canada, ULC, and Cyxtera Canada TRS, ULC.

(s) "Cash Amount" means the aggregate amount (expressed in United States dollars) as of immediately prior to the Closing:

(i) only to the extent remaining as an asset of the Acquired Entities as of the Closing, of the Acquired Entities' cash (including checks and deposits in transit, demand deposits, money markets or similar accounts), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities, and any other cash equivalents to the extent convertible to cash withing 30 days, whether on hand, in transit, in banks or other financial institutions, or otherwise held; plus

(ii) the Acquired Cash Collateral and any cash collateral held by or any behalf of any Acquired Entity as security for any utilities-related Liabilities (including deposits for electricity, telephone or other utilities) of the Acquired Entities, in each case, solely to the extent (A) a corresponding current liability is included in the definition of Working Capital in respect of such specific cash collateral and (B) such cash collateral amount is actually collected (without needing to be replaced) or applied for credit on invoices by Purchaser or its Affiliates in cash within the seventy five (75) day period following the Closing Date; plus

(iii) to the extent that Sellers pay any or all of the accrued key employee retention incentive obligations contemplated by clause (iii) of Section 6.3(d) that are due and owing prior to the Closing Date in accordance with the applicable key employee

retention plan, an amount equal to the amount of such paid obligations not to exceed $2,660,000 in the aggregate;

provided that (X) the Cash Amount shall be reduced by any Restricted Cash of the Acquired Entities and (Y) for clarity, the Cash Amount shall not include the Aggregate DLR Consideration Amount paid to any Acquired Entity or one of its Affiliates; provided further that notwithstanding anything to the contrary contained herein, in no event shall the "Cash Amount" be included in the amount of current assets with respect to Working Capital.

(t) "Cash and Cash Equivalents" means all of Sellers cash (including checks and deposits in transit, demand deposits, money markets or similar accounts), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities, and any other cash equivalents whether on hand, in transit, in banks or other financial institutions, or otherwise held.

(u) "CCAA" means the *Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36).

(v) "CCAA Court" means the Court of King's Bench of Alberta under Court File No. 2301-07385 with respect to the CCAA Proceeding.

(w) "CCAA Orders" means a Canadian recognition Order of the Confirmation Order and a Canadian vesting Order for the benefit of the Purchaser with respect to the Canadian Assets, both as granted by the CCAA Court in the CCAA Proceeding pursuant to the CCAA, in each case in form and substance reasonably acceptable to the Purchaser solely with respect to all provisions of the foregoing that relate to the Purchaser, this Agreement, or the Transactions. Any form of CCAA Orders that is or will be filed, or any amendments to such order, shall be in form and substance acceptable to the Sellers, and with respect to provisions of the CCAA Orders that relate to Purchaser, this Agreement, or the Transactions, Purchaser.

(x) "Closing Working Capital" means the Working Capital as of immediately prior to the Closing.

(y) "COBRA" means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Tax Code and any similar state Law.

(z) "Company Systems" means any and all computer systems, servers, hardware systems, Software, websites, databases, routers, hubs, switches, circuits, networks, data communication lines, workstations, and other information technology systems, infrastructure and equipment owned, leased or licensed by Seller or any of its Subsidiaries.

(aa) "Confidentiality Agreement" means that certain letter agreement, dated as of May 11, 2023, by and between CTI and Brookfield Special Investments LLC (as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms).

(bb) "Confirmation Order" means an order of the Bankruptcy Court, approving the proposed Transactions and the Plan pursuant to sections 105, 363, 365, 1123, 1129, 1141 and 1142 of the Bankruptcy Code, in form and substance reasonably acceptable to the Sellers and, with respect to provisions of the Confirmation Order that relate to Purchaser, this Agreement, or the Transactions, including any amendments thereto, whether before or after such documents and pleadings have been filed with or approved by the Bankruptcy Court, Purchaser. Any form of Confirmation Order that is or will be filed, and any amendments to such order, shall be in form and substance acceptable to the Sellers, and with respect to provisions of the Confirmation Order that relate to Purchaser, this Agreement, or the Transactions, Purchaser.

(cc) "Consent" means any approval, consent, ratification, clearance, non-action, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(dd) "Contract" means any contract, indenture, note, bond, lease, sublease, license, mortgage, agreement, guarantee, or other agreement that is legally binding upon a Person or its property.

(ee) "COVID-19" means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemic or disease outbreaks.

(ff) "Debt Financing Related Parties" means the Debt Financing Sources and their respective Affiliates and each of their respective successors and assigns, together with each of their respective officers, directors, employees, partners, controlling persons, advisors, attorneys, agents and representatives and each of their respective successors and assigns; provided that none of the Purchaser, the Seller nor any Affiliate of the Purchaser or the Seller, as applicable, shall constitute a "Debt Financing Source" or a "Debt Financing Related Party."

(gg) "Debt Financing Sources" means the arrangers or lenders party to the commitment letter in respect of the Debt Financing that have committed to Purchaser or its Affiliates to provide Debt Financing subject to the conditions set forth in such commitment letter.

(hh) "DLR Closing Proceeds" means the actual aggregate cash amount distributed by the UK Seller, the Germany Seller, and the Singapore Seller to one or more of the Sellers pursuant to and in accordance with Section 6.20; for the avoidance of doubt, not including any amounts that are required to be withheld in respect of Taxes under applicable Law from any such distributions by the UK Seller, the Germany Seller, or the Singapore Seller.

(ii) "Documents" means all of Sellers' written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(jj) "Encumbrance" means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, license, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, Orders, covenants, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

(kk) "Environmental Laws" means all Laws concerning pollution, human health or safety (solely to the extent relating to exposure of any natural Person to Hazardous Materials), or protection of the environment as enacted and in effect as of the date hereof.

(ll) "Equipment" means any and all equipment, computers, furniture, furnishings, fixtures, office supplies, supply inventory, vehicles and all other fixed assets.

(mm) "Equity Interests" means, with respect to a Person, any membership interests, partnership interests, profits interests, capital stock or other equity securities (including profit participation features or equity appreciation rights, phantom stock rights or other similar rights) or ownership interests of such Person, or any securities (including debt securities or other Indebtedness) exercisable or exchangeable for or convertible into, or other rights to acquire, membership interests, partnership interests, capital stock or other equity securities or ownership interests of such Person (or otherwise constituting an investment in such Person).

(nn) "ETA" means Part IX of the *Excise Tax Act* (Canada) (R.S.C., 1985, c. E-15), as amended, and the regulations promulgated thereunder.

(oo) "Exchange Act" means the Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(pp) "Excluded Data Center Contracts" means, in the event that the transactions contemplated by the Specified Agreement are consummated in accordance therewith prior to the Closing, the "Assigned Contracts" as defined in and only to the extent defined in the Specified Agreement (other than to the extent constituting Shared Customer Contracts (as defined therein) and the rights, remedies and defenses related thereto and set forth in Section 6.4 thereof).

(qq) "Factoring Facility" means collectively, (i) the Purchase and Sale Agreement, dated as of August 31, 2022, by and among Cyxtera Communications, LLC ("Communications"), Cyxtera Federal Group Inc., and Cyxtera Receivables Holdings, (ii) the Receivables Purchase Agreement, dated as of August 31, 2022, by and among Communications, as servicer, PNC Bank National Association, as administrative agent and PNC Capital Markets LLC, as structuring agent and (iii) the other documentation executed in connection therewith or related thereto.

(rr) "Factoring Facility Payoff Amount" means an aggregate amount equal to (i) $37,500,000 plus (ii) any remaining required amounts (including breakage, termination and other similar costs and expenses) due and owning pursuant to the terms and conditions of, the Factoring Facility upon its termination in accordance with Section 6.7(b) hereof.

(ss) "Final DIP Order" means that certain 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 the automatic stay, and (vi) granting related relief entered on July 19, 2023 in the Bankruptcy Cases [Docket No. 297].

(tt) "Final Order" means an Order entered by the Bankruptcy Court or other court of competent jurisdiction (including the CCAA Court or any other non-U.S. court): (a) that has not been reversed, stayed, modified, amended, or revoked, and as to which (i) any right to appeal or seek leave to appeal, certiorari, review, reargument, stay, or rehearing has been waived or (ii) the time to appeal or seek leave to appeal, certiorari, review, reargument, stay, or rehearing has expired and no appeal, motion for leave to appeal, or petition for certiorari, review, reargument, stay, or rehearing is pending or (b) as to which an appeal has been taken, a motion for leave to appeal, or petition for certiorari, review, reargument, stay, or rehearing has been filed and (i) such appeal, motion for leave to appeal or petition for certiorari, review, reargument, stay, or rehearing has been resolved by the highest court to which the Order or judgment was appealed or from which leave to appeal, certiorari, review, reargument, stay, or rehearing was sought and (ii) the time to appeal (in the event leave is granted) further or seek leave to appeal, certiorari, further review, reargument, stay, or rehearing has expired and no such appeal, motion for leave to appeal, or petition for certiorari, further review, reargument, stay, or rehearing is pending

(uu) "Foreign Representative" means Cyxtera Technologies, Inc.

(vv) "Fraud" means an act committed by (a) Sellers, in the making to Purchaser the representations and warranties in Article III or in the certificate delivered pursuant to Section 2.4(l) or (b) Purchaser, in the making to the Sellers the representations and warranties in Article IV or in the certificate delivered pursuant to Section 2.5(k), in any such case, with intent to deceive another party hereto, or to induce such other party to enter into this Agreement and requires (i) a false representation of material fact made in such representation; (ii) with knowledge that such representation is false; (iii) with an intention to induce the party to whom such representation is made to act or refrain from acting in reliance upon it; (iv) causing that party, in justifiable reliance upon such false representation, to take or refrain from taking action; and (v) causing such party to suffer damage by reason of such reliance, which together constitutes common law fraud under Delaware Law (and does not include any fraud claim based on constructive knowledge, negligent misrepresentation, recklessness or a similar theory).

(ww) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(xx) "Germany Consideration Payment" has the meaning set forth on Exhibit H.

(yy) "Germany Lease Termination Agreements" means the termination agreements in respect of the Germany Leases in the form attached hereto as Exhibit H, in each case, effective on or prior to the Closing.

(zz) "Germany Seller" means Cyxtera Germany GmbH.

(aaa) "Government Official" means an employee, officer, or representative of, or any Person otherwise acting in an official capacity for or on behalf of a Governmental Body, whether elected or appointed, including an officer or employee of a state-owned or state-controlled enterprise, a political party, political party official or employee, candidate for public office, or an officer or employee of a public international organization (such as the World Bank, United Nations, International Monetary Fund, or Organization for Economic Cooperation and Development).

(bbb) "Governmental Authorization" means any Permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(ccc) "Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency, tribunal, board or political subdivision thereof of any nature, whether foreign, federal, provincial, territorial, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(ddd) "GST/HST" means the goods and services tax and harmonized sales tax imposed under Part IX of the ETA.

(eee) "Hazardous Material" means any material, substance or waste that is defined as "hazardous" or "toxic" under Environmental Laws due to its dangerous or deleterious properties or characteristics, including petroleum products or byproducts, friable asbestos, per- and polyfluoroalkyl substances or polychlorinated biphenyls.

(fff) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

(ggg) "Independent Accountant" means RSM US, LLP, or if RSM US, LLC declines to accept engagement hereunder, such other nationally or regionally recognized certified public accounting firm, valuation firm, or firm that practices in purchase price dispute resolution as is reasonably acceptable to Purchaser and Sellers.

(hhh) "Intellectual Property" means any and all intellectual property and other proprietary rights in any jurisdiction throughout the world, whether registered or unregistered including any and all inventions, patents (and all divisions, reissues, continuations, continuations-in-part), industrial designs, trademarks, service marks, corporate names or trade names, logos, trade dress, works of authorship, copyrights, mask works, domain names, social media accounts, Software, data and databases, trade secrets and know-how, applications and registrations for and goodwill associated with any of the foregoing and rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement, misappropriation or other violation of any of the forgoing.

(iii) "International Trade Laws" means any of the following: (a) any Laws concerning the importation of merchandise or items (including technology, services, and Software), including to those administered by U.S. Customs and Border Protection or the U.S.

Department of Commerce, (b) any Laws concerning the exportation or re-exportation of items (including technology, services, and Software), including to those administered by the U.S. Department of Commerce or the U.S. Department of State, or (c) any economic sanctions administered by the United States (including but those administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") and the U.S. State Department), the United Nations, Canada, the European Union, or the United Kingdom.

(jjj) "IRS" means the U.S. Internal Revenue Service and any Governmental Body succeeding to the functions thereof.

(kkk) "ITA" means the *Income Tax Act* (Canada), as amended, and the regulations promulgated thereunder.

(lll) "Knowledge of Seller," "Knowledge of Sellers," or words of like import means the actual knowledge of each of Mitchell Fonseca, Carlos Sagasta, and Victor Semah after reasonable inquiry of their reports.

(mmm)"Law" means any federal, national, state, provincial, territorial, county, municipal, provincial, local, foreign or multinational, statute, constitution, common law, ordinance, code, Order, rule, regulation or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body of competent jurisdiction.

(nnn) "Lease" means any lease, license, concession or other agreement (written or oral) pursuant to which any Seller or any Subsidiary thereof holds any Leased Real Property, and all amendments, renewals, guaranties, assignments and other agreements relating thereto, including the right to all security deposits and other amounts and instruments deposited by or on behalf of Seller or any of its Subsidiaries.

(ooo) "Leased Real Property" means, collectively, all right, title and interest of the Sellers and their Subsidiaries in and to any real property that any Seller or Subsidiary thereof leases, licenses or otherwise uses or occupies or has the right to use or occupy.

(ppp) "Leasehold Improvements" means all buildings, structures, improvements and fixtures which are owned by a Seller or Subsidiary thereof and located on any Leased Real Property, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the Lease for such Leased Real Property.

(qqq) "Liability" means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, Tax, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(rrr) "Material Adverse Effect" means any matter, event, change, development, occurrence, circumstance or effect (each, an "Effect") that, individually or in the aggregate with all other Effects, has had or would reasonably be expected to have a material adverse effect on (x) the Acquired Assets and Assumed Liabilities, taken as whole, or the results of operations or condition (financial or otherwise) of the Acquired Assets and Assumed Liabilities, taken as a whole, or (y) the Sellers' ability to consummate the Closing; provided that solely for purposes of the foregoing clause (x), no Effect shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect, to the extent relating to any Effect in, arising from or relating to (i) general business or economic conditions affecting the industry in which Sellers and their Subsidiaries operate or their respective business is conducted; (ii) national or international political or social conditions, including tariffs, riots, protests, the engagement by the United States or other countries in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist (whether or not state-sponsored) attack upon the United States or any other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, Equipment or personnel of the United States or of any other country; (iii) any fire, flood, hurricane, earthquake, tornado, windstorm, other act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including COVID-19) or any quarantine or trade restrictions related thereto or any other *force majeure*; (iv) the decline or rise in price of any currency or any Equipment or supplies necessary to or used in the provision of services by Sellers or their Subsidiaries; (v) financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract, or index, and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (vi) changes in, GAAP or the interpretation thereof occurring after the date of this Agreement; (vii) changes in, Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Body (including, any such items related to Section 6.5) and any increase (or decrease) in the terms or enforcement of (or negotiations or disputes with respect to or any changes in policy or practices of any Governmental Body regarding) any of the foregoing, in each case occurring after the date of this Agreement; (viii)(A) the taking of any action required by this Agreement (other than pursuant to Section 6.1) or at the written request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement, or pendency of this Agreement or the Transactions, the identity, nature, or ownership of Purchaser or its Affiliates or Purchaser's or its Affiliates' plans with respect to the Acquired Assets and Assumed Liabilities, including the impact thereof on the relationships, contractual or otherwise, of the business of Sellers or their Subsidiaries with employees, customers, lessors, suppliers, vendors, or other commercial partners (other than for purposes of any representation or warranty set forth in Section 3.4 or the conditions set forth in Section 7.2 with respect to such representation or warranty, in either case, to the extent such representation or warranty addresses the effect of the negotiation, announcement or pendency of this Agreement of the Transactions); (ix) any seasonal fluctuations in the business of the Sellers or their Subsidiaries; (x) any failure, in and of itself, to achieve any budgets, Projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) and any other failure to win or maintain customers or business; provided that the underlying cause(s) of such failure may

be taken into account in determining whether a Material Adverse Effect has occurred; (xi) any action taken by Purchaser or its Affiliates with respect to the Transactions or the financing thereof or any breach by Purchaser of this Agreement; (xii) any material breach by Purchaser of this Agreement; or (xiii)(A) the commencement or pendency of the Bankruptcy Cases; (B) any objections in the Bankruptcy Court or the CCAA Court to (1) this Agreement or any of the Transactions, (2) the Plan or the Confirmation Order or the CCAA Order, or the reorganization or liquidation of Sellers or (3) the assumption or rejection of any Assigned Contract; or (C) any Order of the Bankruptcy Court or the CCAA Court or any actions or omissions of Sellers required thereby; provided that any adverse Effects resulting or arising from the matters described in clauses (i) through (vii) and (ix) above may be taken into account in determining whether there has been a Material Adverse Effect to the extent only to the extent, that they have had or would reasonably be expected to have a disproportionate effect on Sellers and their Subsidiaries in the aggregate relative to participants of similar size and scope in the industries and geographic areas in which the Sellers and their Subsidiaries operate.

(sss) "Open Source Software" means software or other material that is distributed as "free software," "open source software" or under similar licensing or distribution terms (including any license approved by the Open Source Initiative and listed at opensource.org/licenses).

(ttt) "Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body of competent jurisdiction, including any Order entered by the Bankruptcy Court in the Bankruptcy Cases (including the Confirmation Order) or any Order entered by the CCAA Court in the CCAA Proceeding (including the CCAA Orders).

(uuu) "Ordinary Course" means the ordinary and usual course of operations of the business conducted by Sellers and their Subsidiaries, taken as a whole consistent with past practice, taking into account the preparation, commencement and pendency of the Bankruptcy Cases.

(vvv) "Organizational Documents" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of formation, certificate of limited partnership or articles of organization, and including any certificates of designation for preferred stock or other forms of preferred equity) or which relate to the internal governance of such Person (such as bylaws, a partnership agreement, an operating, limited liability or members agreement or a stockholders' agreement or any other similar agreement).

(www) "Owned Intellectual Property" means any and all Intellectual Property owned or purported to be owned by any Seller or any of its Subsidiaries, including the Acquired Intellectual Property.

(xxx) "Owned Real Property" means all land, together with all buildings, structures, improvements and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, currently owned by a Seller or any Subsidiary thereof.

(yyy) "Permits" means all licenses, permits, registrations, certifications, agreements, authorizations, Orders, certificates, qualifications, waivers, approvals, permissions, authorizations, and exemptions pending with or issued by Governmental Bodies.

(zzz) "Permitted Encumbrances" means (i) Encumbrances for utilities and Taxes (A) which are not yet due and payable, (B) that are being contested in good faith by appropriate proceedings or (C) the nonpayment of which is permitted or required by the Bankruptcy Code, in each case, for which adequate reserves have been established in accordance with GAAP, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Acquired Assets (other than Intellectual Property) which do not, individually or in the aggregate, materially adversely affect the operation of the applicable Acquired Assets and, in the case of Owned Real Property or Leased Real Property, which do not, individually or in the aggregate, materially adversely affect the use or occupancy of the applicable Owned Real Property or Leased Real Property as it relates to the operation of the Acquired Assets, (iii) in the case of any Owned Real Property or Leased Real Property, applicable zoning Laws, building codes, land use restrictions, Environmental Laws and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Owned Real Property or Leased Real Property, as applicable, (iv) materialmen's, mechanics', artisans', shippers', warehousemen's or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable, (v) such other non-monetary Encumbrances or title exceptions which do not, individually or in the aggregate, materially and adversely affect the operation of the applicable Acquired Assets (other than Intellectual Property), (viii) non-exclusive licenses of Intellectual Property granted in the Ordinary Course, (ix) any Encumbrances set forth on Schedule 11.1(zzz), and (x) solely prior to Closing, any Encumbrances that will be removed or released by operation of the Confirmation Order.

(aaaa) "Permitted Post-Closing Encumbrances" means (a) in the case of any Owned Real Property or Leased Real Property, applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Owned Real Property or Leased Real Property, as applicable, (b) non-monetary Encumbrances not violated by Sellers' current use of the assets or property subject to such Encumbrances, to the extent that the Confirmation Order does not in fact release such Encumbrances upon the Closing, and (c) in the case of any Leased Real Property, any Encumbrances on the interest of the landlord or sublandlord under the applicable Lease or on the underlying fee interest therein.

(bbbb) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, organization, estate, Governmental Body or other entity or group.

(cccc) "Personal Information" means (1) any information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means, including any information that can be used to distinguish or trace an individual's identity, including name, email address, phone number, social security number, date and place of birth, mother's maiden name, and (2) any other information that is linked or linkable to an individual, including financial, medical, biometric, and geolocation information.

(dddd) "Plan" means the *Second Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 551], dated as of September 24, 2023, and the Plan Supplement, each as may be amended, restated, supplemented, or otherwise modified from time to time, in form and substance reasonably acceptable to the Sellers and with respect to provisions of the Plan and the Plan Supplement that relate to Purchaser, this Agreement, or the Transactions, including any amendments thereto, whether before or after such documents and pleadings have been filed with or approved by the Bankruptcy Court, the Purchaser. Any form of Plan and the Plan Supplement that is or will be filed, or any amendments to such Plan and the Plan Supplement, shall be in form and substance acceptable to the Sellers, and with respect to provisions of the Plan and the Plan Supplement that relate to Purchaser, this Agreement, or the Transactions, the Purchaser.

(eeee) "Privacy Laws" means all Laws or binding standards (including the PCI-DSS Standards) applicable to the operation of each Seller's and Acquired Entity's business during the relevant period relating to the Processing of Personal Information.

(ffff) "Processing" means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, including collection, recording, organization, storage, or alteration, use, disclosure by transmission, dissemination or otherwise making available, erasure or destruction.

(gggg) "Purchaser Group" means, with respect to Purchaser, Purchaser, the Investors, any Affiliate of Purchaser (including, following the Closing, the Acquired Entities) or any Investor, any lender or investor of the foregoing and any Affiliate of any such lender or investor, and, in each case of the foregoing, each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(hhhh) "Restricted Cash" means any cash and cash equivalents that (i) are not freely usable because such cash and cash equivalents are subject to restrictions or limitations on use or distribution by Law, Contract or otherwise (including restrictions on dividends or repatriation) or (ii) would be subject to, or otherwise give rise to, Taxes if distributed or repatriated (but then solely an amount equal to the amount of such Taxes shall be Restricted Cash). Without limiting the foregoing, "Restricted Cash" shall include (a) any cash that is subject to restrictions on use by Contract or applicable Law (including security deposits, cash held in escrow or posted for bonds), (b) the amounts of any outstanding checks, drafts and wire transfers at such time, (c) Transaction expenses or Indebtedness paid after the effective date of the Estimated Closing Statement, but prior to the Closing, as calculated in accordance with the Working Capital Methodology, and (d) any marketable securities and other short term investments (including amounts held in brokerage accounts).

(iiii) "Securities Act" means the Securities Act of 1933 and the rules and regulations promulgated thereunder.

(jjjj) "Seller Parties" means each Seller and its former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(kkkk) "Singapore Consideration Payment" has the meaning set forth on Exhibit H.

(llll) "Singapore Lease Termination Agreements" means the termination agreements in respect of the Singapore Leases in the form attached hereto as Exhibit H in each case, effective on or prior to the Closing.

(mmmm) "Singapore Seller" means Cyxtera Singapore Pte. Ltd.

(nnnn) "Software" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code, object code, human readable form or other form (ii) databases and compilations, whether machine readable or otherwise, (iii) descriptions, flow-charts, instructions and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (iv) all documentation, including user manuals and other training documentation, related to any of the foregoing.

(oooo) "Specified Agreement" has the meaning set forth in Schedule (oooo).

(pppp) "Straddle Period" means any taxable period that includes but does not end on the Closing Date.

(qqqq) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company or other entity of which a majority of the total voting power of shares of stock or other Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees or other governing body or Person thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by, or the general partner, manager, managing member or similar is or is owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(rrrr) "Tax" or "Taxes" means all U.S. federal, state, provincial, local or non-U.S. taxes including any net income, gross receipts, capital stock, franchise, profits, ad valorem, value added, levies, duties, fees, imposts, import, export, withholding, social security, governmental pension, employment insurance, unemployment, disability, workers compensation, real property, personal property, business, development, occupancy, stamp, excise, occupation, consumption sales, use, transfer, land transfer, conveyance, service, digital service, registration, premium, windfall or excess profits, customs, licensing, surplus, alternative minimum, estimated, GST/HST or other similar tax, including any interest, penalty, fines or addition thereto.

(ssss) "Tax Code" means the United States Internal Revenue Code of 1986, as amended.

(tttt) "Tax Return" means any return, report, election, statement, and any similar filing (including the attached schedules) filed or required to be filed with respect to Taxes, including any information return, claim for refund, or amended return.

(uuuu) "Taxing Authority" means any Governmental Body exercising authority with respect to Taxes or Tax matters.

(vvvv) "Transaction Agreements" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(wwww) "Transactions" means the transactions contemplated by this Agreement and the other Transaction Agreements.

(xxxx) "UK Consideration Payment" has the meaning set forth on Exhibit H.

(yyyy) "UK Seller" means Cyxtera Technology UK Limited.

(zzzz) "US Intangibles Consideration Payment" has the meaning set forth on Exhibit H.

(aaaaa) "VAT" means (i) value added tax as defined in the Value Added Tax Act 1994; (ii) any Tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); (iii) any Tax computed or charged by reference to use, consumption of goods and services, value added, turnover, sales, use, distribution including provincial sales Taxes, and retail sales Taxes; and (iv) any corresponding Tax or Tax of a similar nature to such Tax referred to in (ii) or (iii) above, in any jurisdiction.

(bbbbb) "Working Capital" means, at any date, (i) the consolidated current assets of Sellers and their Subsidiaries set forth under the heading "Current Assets" on Exhibit F, minus (ii) the consolidated current liabilities of Sellers and their Subsidiaries set forth under the heading "Current Liabilities" on Exhibit F, in each case calculated in accordance with, and including the use of the same line items and line item entries set forth in, Exhibit F and the Working Capital Methodology.

(ccccc) "Working Capital Methodology" means the accounting principles, methods, assumptions, policies, procedures, categorizations and practices set forth on Exhibit F.

(ddddd) "Working Capital Overage" means, when (and only when) the Closing Working Capital is greater than the Working Capital Target, the amount by which the Closing Working Capital is greater than the Working Capital Target.

(eeeee) "Working Capital Target" means negative ninety-three million United States dollars $(93,000,000).

(fffff) "Working Capital Underage" means when (and only when) the Closing Working Capital is less than the Working Capital Target, the amount by which the Closing Working Capital is less than the Working Capital Target.

11.2 Index of Defined Terms.

11.3 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, Schedule and exhibit references contained in this Agreement are references to sections, clauses, Schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(c) The words "to the extent" shall mean "the degree by which" and not simply "if."

(d) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(e) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(f) The word "will" will be construed to have the same meaning and effect as the word "shall." The words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive.

(g) All references to "$" and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(h) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(i) Any document or item will be deemed "delivered," "provided" or "made available" by Sellers, within the meaning of this Agreement if and only if such document or item is included in the Dataroom prior to 6:00 p.m. Eastern Time on October 31, 2023 through the Closing Date. Sellers will continue to maintain Purchaser's and its Advisors' access to the Dataroom, as in effect as of the date hereof, and the Designee Dataroom to Purchaser (and its Designee) through the Closing Date and will also deliver or cause to be delivered to Purchaser, no later than the Closing, two identical encrypted USB devices with the contents of the Dataroom.

(j) Sellers shall provide any document or item that (i) is required to be and is deemed to have been "delivered," "provided" or "made available" by Sellers, within the meaning of this Agreement, and (ii)(A) relates to the UK Seller's "LHR1" data center or (B) is to be

provided to Designee or its Affiliates pursuant to the Germany Lease Termination Agreement or the Singapore Lease Termination Agreements, to the electronic "data room" through www.dfsvenue.com, a website maintained by Sellers (the "Designee Dataroom") prior to 5:00 p.m. Eastern Time on the date that is five (5) Business Days following the date hereof, which shall be maintained by or on behalf of the Sellers through the Closing Date. In addition, Sellers will provide materials that are required to be provided to Designee pursuant to any other definitive agreements relating to the DLR Transactions in the Designee Dataroom in a timely manner in accordance with such agreements. Sellers will continue to maintain Designee's and its Advisors' access to the Designee Dataroom, as in effect as of the date hereof, through the Closing Date and will also deliver or cause to be delivered to Designee, no later than the Closing, two identical encrypted USB devices with the contents of the Designee Dataroom.

(k) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived, but in the case of a Contract required to be made available, only if all such amendments, modifications, supplements or waivers have been made available.

(l) Any reference to any particular Bankruptcy Code or Tax Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Bankruptcy Code or Tax Code section or Law, the reference to such Bankruptcy Code or Tax Code section or Law means such Bankruptcy Code or Tax Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

(m) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and assigns, but only if such successors and assigns are not prohibited by this Agreement.

(n) A reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

[*Signature pages follow.*]

# Appendix “C”

Docket #0718 Date Filed: 11/17/2023

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

**Order Filed on November 17, 2023**
**by Clerk**
**U.S. Bankruptcy Court**
**District of New Jersey**

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al* | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

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

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**REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING THE FOURTH AMENDED JOINT PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

The relief set forth on the following pages, numbered three (3) through 116, is **ORDERED**.

**DATED: November 17, 2023**

Honorable John K. Sherwood
United States Bankruptcy Court

The above-captioned debtors and debtors in possession (collectively, the "Debtors") having:

a. commenced, on June 4, 2023 (the "Petition Date"), these chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions in the United States Bankruptcy Court for the District of New Jersey (the "Court") for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code");[2]

b. continued to operate their businesses and manage their properties as debtors in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code;

c. obtained, on June 29, 2023, the *Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 180] (the "Bidding Procedures Order" and the procedures attached as Exhibit 1 thereto and approved thereby the "Bidding Procedures");

d. obtained, on July 20, 2023, the *Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, (IV) Approving Notice Thereof, and (V) Granting Related Relief* [Docket No. 298] (the "Bar Date Order");

e. filed, on August 7, 2023, the *Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 372];

f. filed, on August 15, 2023, the *Disclosure Statement Relating to the Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 407], and the *Debtors' Motion for Entry of an Order Approving (I) the Adequacy of the Disclosure Statement, (II) the Solicitation Procedures, (III) the Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 408];

[2] Capitalized terms used but not otherwise defined in these findings of fact, conclusions of law, and order (collectively, the "Confirmation Order") have the meanings given to them in the *Fourth Amended Joint Plan of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, attached hereto as **Exhibit A** (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto). The rules of interpretation set forth in Article I.B of the Plan apply to this Confirmation Order.

g. filed, on August 29, 2023, the *Notice of Cancellation of Auction* [Docket No. 472];

h. filed, on September 13, 2023, the *Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 501] and the *Disclosure Statement Relating to the Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 502];

i. filed, on September 24, 2023, the *Second Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 551] and the *Disclosure Statement Relating to the Second Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 552] (the "Disclosure Statement").

j. obtained, on September 26, 2023, entry of the *Order Approving (I) the Adequacy of the Disclosure Statement, (II) the Solicitation Procedures, (III) the Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 563] (the "Disclosure Statement Order") approving the Disclosure Statement, solicitation and voting procedures (the "Solicitation and Voting Procedures"), and related notices, forms, and ballots (collectively, the "Solicitation Packages") and related dates and deadlines;

k. caused the Solicitation Packages and notice of the Confirmation Hearing and the deadline for objecting to confirmation of the Plan to be distributed on September 28, 2023, (collectively, the "Solicitation Date"), in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Disclosure Statement Order, and the Solicitation and Voting Procedures, as evidenced by, among other things, the *Certificate of Service* [Docket No. 592] (the "Solicitation Certificate");

l. caused, on October 2, 2023, the notice of hearing to consider confirmation of the Plan (the "Confirmation Hearing," and such notice, the "Confirmation Hearing Notice") to be published in the *New York Times* (national edition), as evidenced by the *Proof of Publication* [Docket No. 572] (the "New York Times Publication Affidavit");

m. caused, on October 3, 2023, the Confirmation Hearing Notice to be published in the *Financial Times*, as evidenced by the *Affidavit of Publication* [Docket No. 573] (the "Financial Times Publication Affidavit," and together with the New York Times Publication Affidavit, the "Publication Affidavits");

n. filed, on October 19, 2023, the *Notice of Amended Confirmation Dates* [Docket No. 598] (the "Notice of Amended Timeline");

o. filed, on October 26, 2023, the *Notice of Amended Confirmation Dates* [Docket No. 639] (the "Second Notice of Amended Timeline");

p. filed, on October 30, 2023 the *Notice of Amended Confirmation Dates* [Docket No. 645] (the "Third Notice of Amended Timeline" and, together with the Notice of Amended Timeline and the Second Notice of Amended Timeline, the "Notices of Amended Timeline");

q. filed, on November 1, 2023, the *Notice of Sale Transaction* [Docket No. 648] (the "Sale Transaction Notice");

r. caused the Sale Transaction Notice to be distributed on November 2, 2023, as evidenced by the *Certificate of Service* [Docket No. 684] (the "Sale Transaction Notice Certificate");

s. filed, on November 2, 2023, the *Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 649];

t. filed, on November 3, 2023, the *Notice of Filing Plan Supplement for the Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 650];

u. obtained, on November 13, 2023, the *Order (I) Approving the Bid Protections and (II) Granting Related Relief* [Docket No. 687] (the "Bid Protections Order");

v. filed, on November 13, 2023, the *Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 694] (the "Plan");

w. filed, on November 14, 2023, the *Debtors' Memorandum of Law in Support of the Debtors' Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 695] (the "Confirmation Brief");

x. filed, on November 14, 2023, the *Declaration of Eric Koza in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 696] (the "Koza Declaration");

y. filed, on November 14, 2023, the *Declaration of Roger Meltzer in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 697] (the "Meltzer Declaration");

z. filed, on November 14, 2023, the *Declaration of Ronen Bojmel in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 698] (the "Bojmel Declaration" and together with the Koza Declaration and the Meltzer Declaration, the "Declarations");

aa. filed, on November 14, 2023, the *Declaration of James Lee with Respect to the Tabulation of Votes on the Second Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 699] (the "Voting Report"); and

bb. filed, on November 16, 2023, the *First Amended Notice of Filing Plan Supplement for the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 713] (as amended, modified, or supplement from time to time, the "Plan Supplement").

This Court having:

a. entered the Bidding Procedures Order on June 29, 2023;

b. entered the Disclosure Statement Order on September 26, 2023 [Docket No. 563];

c. entered the Bid Protections Order on November 13, 2023 [Docket No. 687];

d. set November 7, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline for filing objections to confirmation of the Plan (the "Objection Deadline");

e. set November 7, 2023, at 4:00 p.m. (prevailing Eastern Time) as the deadline to vote on the Plan (the "Voting Deadline");

f. set November 14, 2023, as the deadline to file the Confirmation Brief and the Voting Report and reply to objections to confirmation of the Plan;

g. set November 16, 2023, at 2:00 p.m. (prevailing Eastern Time) as the date and time for the commencement of the Confirmation Hearing in accordance with rules 3017 and 3018 of the Bankruptcy Rules, rule 3018-1 of the Local Rules, and sections 1125, 1126, 1128, and 1129 of the Bankruptcy Code;

h. reviewed the Plan, the Disclosure Statement, the Confirmation Brief, the Voting Report, the Declarations, and all pleadings, exhibits, statements, responses, and comments regarding Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;

i. held the Confirmation Hearing on November 16, 2023, at 2:00 p.m. (prevailing Eastern Time);

j. heard the statements and arguments made by counsel with respect to Confirmation;

k. considered all oral representations, live testimony, written direct testimony, exhibits, documents, filings, and other evidence presented at the Confirmation Hearing;

l. overruled any and all objections to the Plan and Confirmation, except as otherwise stated or indicated on the record, and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated; and

m. taken judicial notice of all pleadings and other documents filed, all orders entered, and all evidence and arguments presented in these Chapter 11 Cases.

NOW, THEREFORE, the Court having found that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the record of the Chapter 11 Cases and the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing including, without limitation, the Declarations establish just cause for the relief granted in this Confirmation Order; and after due deliberation thereon and good cause appearing therefor, the Court hereby makes and issues the following findings of fact, conclusions of law, and order:

## I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY FOUND AND DETERMINED THAT:

**A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and on the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**B. Jurisdiction and Venue.**

2. 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 Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to entry of a final order by the Court in connection with Confirmation 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. Venue in this Court was proper as of the Petition Date and continues to be proper under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

**C. Eligibility for Relief.**

3. The Debtors were and continue to be entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of the Chapter 11 Cases.**

4. On the Petition Date, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On June 6, 2023, the Court entered the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 71] authorizing the joint administration of the Chapter 11 Cases in accordance with Bankruptcy Rule 1015(b). The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

**E. Appointment of the Committee.**

5. On June 21, 2023, the U.S. Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") to represent the interests of the unsecured creditors of the Debtors in the Chapter 11 Cases [Docket No. 133].

**F. The Bar Dates.**

On July 20, 2023, the Bankruptcy Court entered the Bar Date Order, setting (a) August 15, 2023, as the last day for filing Proofs of Claim (including Proofs of Claim for Claims arising under Section 503(b) of the Bankruptcy Code) against the Debtors that arose (or was deemed to have arisen) before the Petition Date and (b) December 1, 2023, as the last day

for filing Proofs of Claim of Governmental Unit (as defined in section 101(27) of the Bankruptcy Code).

**G. Plan Supplement.**

6. On November 3, 2023, the Debtors filed the Plan Supplement with the Court. The Plan Supplement complies with the terms of the Plan, and the Debtors provided good and proper notice of the filings in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order, and the facts and circumstances of the Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement. All documents included in the Plan Supplement (including, but not limited to, Exhibit C thereof) are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan and the consent rights set forth therein and in the other Definitive Documents, including the Purchase Agreement, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date, subject to compliance with the Bankruptcy Code and the Bankruptcy Rules; *provided* that no such alteration, amendment, update, or modification shall be inconsistent with the terms of this Confirmation Order or the Plan.

**H. Modifications to the Plan.**

7. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan since the commencement of Solicitation described or set forth herein constitute technical changes or changes with respect to particular Claims or Interests made pursuant to the agreement of the Holders of such Claims or Interests and do not materially and adversely affect the treatment of any Claims or Interests. Pursuant to Bankruptcy Rule 3019, these modifications do not require

additional disclosure under section 1125 of the Bankruptcy Code or the re-solicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

8. This Confirmation Order contains modifications to the Plan that were made to address objections and informal comments received from parties in interest. Modifications to the Plan since entry of the Disclosure Statement Order, if any, are consistent with the provisions of the Bankruptcy Code. The disclosure of any Plan modifications prior to or on the record at the Confirmation Hearing constitutes due and sufficient notice of any and all Plan modifications. The Plan as modified shall constitute the Plan submitted for Confirmation.

**I. Objections Overruled.**

9. Any resolution or disposition of objections to Confirmation explained or otherwise ruled upon by the Court on the record at the Confirmation Hearing is and/or are hereby incorporated by reference. All unresolved objections, statements, and reservations of rights are hereby overruled on the merits.

**J. Disclosure Statement Order.**

10. On September 26, 2023, the Court entered the Disclosure Statement Order [Docket No. 563], which, among other things, fixed October 26, 2023, at 4:00 p.m. (prevailing Eastern Time) as the Objection Deadline and the Voting Deadline and fixed November 6, 2023, at 10:00 a.m. (prevailing Eastern Time) as the date and time for the Confirmation Hearing. The Debtors' use of the Disclosure Statement to solicit votes to accept or reject the Plan was authorized by the Disclosure Statement Order. On October 19, 2023, the Debtors amended the

confirmation schedule in the Disclosure Statement, by filing the Notice of Amended Timeline, including by extending the Objection Deadline and the Voting Deadline to November 2, 2023, at 4:00 p.m. (prevailing Eastern Time) and fixing November 16, at 2:00 p.m. (prevailing Eastern Time) as the date and time for the Confirmation Hearing. On October 26, 2023, the Debtors again amended the confirmation schedule in the Disclosure Statement, by filing the Second Notice of Amended Timeline, including by extending the Objection Deadline and the Voting Deadline to November 6, 2023. On October 30, 2023, the Debtors once again amended the confirmation schedule in the Disclosure Statement, by filing the Third Notice of Amended Timeline, including by extending the Objection Deadline and the Voting Deadline to November 7, 2023. [3]

**K. Notice.**

11. As evidenced by the Solicitation Certificate, the Publication Affidavits, the Sale Transaction Notice Certificate, and the Voting Report, the Debtors provided due, adequate, and sufficient notice of the Petition Date, the Plan, the Disclosure Statement, the Disclosure Statement Order, the Solicitation Packages, the Sale Transaction Notice, the Confirmation Hearing Notice, the Plan Supplement, and all the other materials that the Debtors distributed in connection with the Confirmation of the Plan are in compliance with the Bankruptcy Rules, including Bankruptcy Rules 2002(b), 3017, 3019, and 3020(b), the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules"), and the procedures set forth in the Disclosure Statement Order. The Debtors provided due, adequate, and sufficient notice of the Voting

[3] *See* Notices of Amended Timeline.

Deadline and Objection Deadline, the Confirmation Hearing (as may be continued from time to time), and any applicable bar dates and hearings described in the Disclosure Statement Order in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order. No other or further notice is or shall be required.

**L. Solicitation.**

12. The Debtors solicited votes for acceptance and rejection of the Plan in good faith, and the Solicitation Packages provided the opportunity for voting creditors to opt out of the releases. Such solicitation complied with sections 1125 and 1126 and all other applicable sections of the Bankruptcy Code, rules 3017, 3018, and 3019 of the Bankruptcy Rules, the Disclosure Statement Order, the Local Rules, and all other applicable rules, laws, and regulations.

13. The period during which the Debtors solicited acceptances of or rejections to the Plan was a reasonable and sufficient period of time for each holder in the Voting Classes to make an informed decision to accept or reject the Plan.

**M. Service of Opt-Out Form.**

14. The process described in the Voting Report that the Debtors and the Claims and Noticing Agent followed to identify the relevant parties on which to serve the applicable Ballot or Notice of Non-Voting Status and Opt Out Form (each as defined in the Solicitation and Voting Procedures) and to distribute the Notice of Non-Voting Status and Opt Out Forms (i) is consistent with the industry standard and (ii) was reasonably calculated to ensure that each Holder of Claims and Interests in each Class was informed of its ability to opt out of the Third-

Party Release and the consequences for failing timely to do so. For the avoidance of doubt, any party that elected in the Notice of Non-Voting Status and Opt Out Form to opt out of the Third-Party Release and timely submitted such election to the Claims and Noticing Agent in accordance with the applicable Solicitation Packages prior to any deadline to submit a Ballot, whether under any original or extended deadline, shall be neither a Released Party nor a Releasing Party under the Plan.

**N. Voting Report.**

15. Before the Confirmation Hearing, the Debtors filed the Voting Report. The Voting Report was admitted into evidence during the Confirmation Hearing. The procedures used to tabulate ballots were fair and conducted in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations.

16. As set forth in the Plan, Holders of Claims in Class 3 and Class 4 (collectively, the "Voting Classes") were eligible to vote on the Plan in accordance with the Solicitation and Voting Procedures. Holders of Claims in Class 1 and Class 2 (collectively, the "Deemed Accepting Classes") are Unimpaired and conclusively presumed to accept the Plan and, therefore, did not vote to accept or reject the Plan. Holders of Claims in Class 6 and Holders of Interests in Class 7 are either Unimpaired and conclusively presumed to have accepted the Plan or Impaired and conclusively deemed to reject the Plan and, therefore, are not entitled to vote to accept or reject the Plan. Holders of Claims in Class 5 and Holders of Interests in Class 8

(collectively, the "Deemed Rejecting Classes") are Impaired and entitled to no recovery under the Plan and are, therefore, deemed to have rejected the Plan.

17. As evidenced by the Voting Report, Class 3 and Class 4 each voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code.

**O. Bankruptcy Rule 3016.**

18. The Plan and all modifications thereto were dated and identified the entities submitting such modification, thus satisfying Bankruptcy Rule 3016(a). The Debtors appropriately filed the Disclosure Statement and the Plan with the Court, thereby satisfying Bankruptcy Rule 3016(b). The injunction, release, and exculpation provisions in the Disclosure Statement and the Plan describe, in bold font and with specific and conspicuous language, all acts to be enjoined, released, and exculpated and identify the entities that will be subject to the injunction, releases, and exculpations, thereby satisfying Bankruptcy Rule 3016(c).

**P. Burden of Proof.**

19. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, the applicable evidentiary standard for Confirmation. Further, the Debtors have proven the elements of sections 1129(a) and 1129(b) by clear and convincing evidence. Each witness who testified on behalf of the Debtors in connection with Confirmation, including those who testified via written declaration, was credible, reliable, and qualified to testify as to the topics addressed in his or her testimony.

**Q. Compliance with the Requirements of Section 1129 of the Bankruptcy Code.**

20. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as follows:

**a. Section 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code.**

21. The Plan complies with all applicable provisions of the Bankruptcy Code, including sections 1122 and 1123, as required by section 1129(a)(1) of the Bankruptcy Code.

**i. Sections 1122 and 1123(a)(1)—Proper Classification.**

22. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. In accordance with sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Interests into eight different Classes based on differences in the legal nature or priority of such Claims and Interests (other than Administrative Claims, DIP Claims, Professional Fee Claims, Priority Tax Claims, Restructuring Expenses, and Receivables Program Claims, which are addressed in Article II of the Plan and are not required to be designated as separate Classes by section 1123(a)(1) of the Bankruptcy Code). Valid business, factual, and legal reasons exist for the separate classification of such Claims and Interests, and such classifications were not implemented for any improper purpose and do not unfairly discriminate between or among Holders of Claims and Interests.

23. In accordance with section 1122(a) of the Bankruptcy Code, each Class of Claims or Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code.

**ii. Section 1123(a)(2)—Specification of Unimpaired Classes.**

24. Article III of the Plan specifies that Claims and Interests, as applicable, in Classes 1 and 2 are Unimpaired under the Plan, within the meaning of section 1124 of the Bankruptcy Code. Holders of Claims in Class 6 and Holders of Interests in Class 7 are either Unimpaired and conclusively presumed to have accepted the Plan or are Impaired and deemed to reject the Plan and, in either event, are not entitled to vote to accept or reject the Plan. Additionally, Article II of the Plan specifies that, although not classified under the Plan, Administrative Claims, DIP Claims, Professional Fee Claims, Priority Tax Claims, Restructuring Expenses, and Receivables Program Claims will be paid in full or otherwise unimpaired in accordance with the terms of the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

**iii. Section 1123(a)(3)—Specification of Treatment of Impaired Classes.**

25. Article III of the Plan specifies that Claims and Interests, as applicable, in Classes 3, 4, 5, and 8 are Impaired under the Plan, within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes under the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

**iv. Section 1123(a)(4)—No Discrimination.**

26. Article III of the Plan provides for the same treatment to each Claim or Interest in each respective Class, unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment with respect to such Claim or Interest. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

**v. Section 1123(a)(5)—Adequate Means for the Plan's Implementation.**

27. The Plan and the various documents included in the Plan Supplement provide adequate and proper means for the Plan's execution and implementation, including: (i) the good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan; (ii) authorization for the Debtors and the Purchaser or a Designee to take all actions necessary to consummate the Asset Sale pursuant to the terms of the Purchase Agreement and the Plan, including any restructuring transaction steps set forth in the Plan Supplement; (iii) the funding and sources of consideration for the Plan distributions; (iv) preservation of the Debtors' corporate existence following the Effective Date (except as otherwise provided in the Plan); (v) the vesting of the Estates' assets in the respective Post-Effective Date Debtors; (vi) the cancellation of existing agreements and Interests; (vii) the effectuation and implementation of other documents and agreements contemplated by, or necessary to effectuate, the Asset Sale and other transactions contemplated by the Plan; (viii) the assumption of certain employment obligations; (ix) the preservation of certain Claims and Causes of Action not released pursuant to the Plan; (x) the closing of certain of the Chapter 11 Cases; (xi) consummation of the Sale Transaction and entry into and performance under the Purchase Agreement and related documents; (xii) appointment of the Plan Administrator; (xiii) winding down of the Debtors' estates following consummation of the Asset Sale; (xiv) creation of the GUC Trust and entry into and performance under the GUC Trust Agreement; and (xv) preservation of the D&O Liability Insurance Policies. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

**vi. Section 1123(a)(6)—Non-Voting Equity Securities.**

28. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code because it does not provide for the issuance of new equity interests. Art. IV.C.4. To the extent the beneficial interests in the GUC Trust are deemed to be "securities" as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and applicable state securities laws, the beneficial interests shall not be non-voting equity securities. Accordingly, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

**vii. Section 1123(a)(7)—Directors, Officers, and Trustees.**

29. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Article IV.I of the Plan discharges all of the Debtors' directors from their duties effective as of the Effective Date without any further action. In addition, Article IV.D.4 of the Plan provides that, on the Effective Date, the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Post-Effective Date Debtors and shall succeed to the powers of the Post-Effective Date Debtors' managers, directors, and officers. The manner for selection of the Plan Administrator is set forth in the Plan and Plan Supplement. The selection of Eugene Davis as the Plan Administrator complies with the Plan and is consistent with the interests of Holders of Claims and Interests and public policy. Accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

**b. Section 1123(b)—Discretionary Contents of the Plan.**

30. The Plan's discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, the Plan satisfies section 1123(b).

**i. Impairment/Unimpairment of Any Class of Claims or Interests.**

31. Pursuant to the Plan, Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests, as contemplated by section 1123(b)(1) of the Bankruptcy Code.

**ii. Assumption and Rejection of Executory Contracts and Unexpired Leases.**

32. Article V of the Plan provides that pursuant to sections 365 and 1123 of the Bankruptcy Code, each Executory Contract or Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be (i) assumed or assumed and assigned to the Purchaser or a Designee[4] in accordance with the Purchase Agreement, as applicable, if it is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases; (ii) assumed and assigned to the Purchaser or a Designee in accordance with the Purchase Agreement if it is not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and does not relate exclusively to Excluded

[4] "Designee" means any Person (as defined in the Purchase Agreement) that is properly designated by Purchaser in accordance with Section 1.7 of the Purchase Agreement, which, for the avoidance of doubt, will include certain affiliates of Digital Realty Trust, Inc. Digital Singapore Jurong East Pte. Ltd. is a Designee with respect to the Singapore Transaction (as defined in the Purchase Agreement). InterXion Deutschland GmbH and Digital Greenfield B.V. are Designees with respect to the Germany Transaction (as defined in the Purchase Agreement). In the event the parties exercise their option to pursue the UK Transaction, Purchaser may further designate an affiliate of Digital Realty Trust, Inc. as a Designee for the UK Transaction.

Assets or Excluded Liabilities; or (iii) rejected if it is (a) listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or (b) not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and relates exclusively to Excluded Assets or Excluded Liabilities. For the avoidance of doubt, the foregoing shall not affect any Executory Contract or Unexpired Lease that is (i) explicitly designated by the Plan or the Confirmation Order to be assumed or assumed and assigned, as applicable, in connection with the Confirmation of the Plan; (ii) subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (iii) a D&O Liability Insurance Policy; or (iv) a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to affiliates or Designees.

33. Article V.D of the Plan provides that, unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection (an "Executory Contract Objection") filed by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or assumption and assignment, including pursuant to the Plan, or related Cure amount must be Filed, served, and actually received by counsel to the Debtors and the U.S. Trustee by the applicable Assumption or Rejection Objection Deadline, or any other deadline that may be set by the Court.

34. The Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the

Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims, and other parties in interest in these Chapter 11 Cases.

**iii. Compromise and Settlement.**

35. In accordance with section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan and with the support of the various creditors, stakeholders, and other parties in interest, including the Committee, the provisions of the Plan constitute a good-faith compromise of all Claims, Interests, Causes of Action, as applicable, and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. Those settlements and compromises are fair, equitable, and reasonable and approved as being in the best interests of the Debtors and their Estates.

**iv. Debtor Release.**

36. In accordance with section 1123(b)(3)(A) of the Bankruptcy Code, the releases of claims and Causes of Action by the Debtors described in Article VIII.C of the Plan (the "Debtor Release") represent a valid exercise of the Debtors' business judgment under Bankruptcy Rule 9019. The Debtors' pursuit of any such claims against the Released Parties is not in the best interests of the Estates' various constituencies because the costs involved would likely outweigh any potential benefit from pursuing such claims. The Debtor Release is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests.

37. Creditors in Class 3 and Class 4 have voted in favor of the Plan, including the Debtor Release. The Plan, including the Debtor Release, was negotiated at arm's-length and in good faith by sophisticated parties represented by able counsel and financial advisors. Therefore, the Debtor Release is the result of an arm's-length negotiation process.

38. The Debtor Release appropriately offers protection to parties that participated in the Debtors' restructuring process. Specifically, the Released Parties under the Plan—including (i) each Debtor; (ii) each Post-Effective Date Debtor; (iii) each Consenting Stakeholder; (iv) each Releasing Party; (v) each Agent; (vi) each DIP Lender; (vii) the Purchaser; (viii) the Committee and each member of the Committee; (ix) each current and former Affiliate of each Entity in clause (i) through the following clause (x); (x) each Related Party of each Entity in clause (i) through this clause (x)—made significant concessions and contributions to the Debtors' Chapter 11 Cases, including, as applicable, (i) negotiating and actively supporting the Plan and the Chapter 11 Cases, (ii) providing necessary liquidity for the Debtors during the Chapter 11 Cases, (iii) settling and compromising substantial rights and claims against the Debtors under the Plan, and (iv) proposing, negotiating in good faith, and ultimately consummating the value-maximizing Sale Transaction contemplated by the Plan and the Purchase Agreement for the benefit of the Debtors, their Estates, and all parties in interest.

39. The scope of the Debtor Release is appropriately tailored under the facts and circumstances of the Chapter 11 Cases. The Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the Claims released by the Debtor Release; (iii) in the best interests of the

Debtors and all Holders of Claims and Interests; (iv) fair, equitable, and reasonable; (v) given and made after due notice and opportunity for hearing; and (vi) a bar to any of the Debtors the Post-Effective Date Debtors, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release. In addition, the Special Committee conducted an independent investigation into certain historical transactions and determined that the Debtors did not have any colorable claims or causes of action that it would be in the best interests of the Debtors or their Estates to pursue. In light of, among other things, the value provided by the Released Parties to the Debtors' Estates and the critical nature of the Debtor Release to the Plan, the Debtor Release is approved.

**v. Release by Holders of Claims and Interests.**

40. The release by the Releasing Parties (the "Third-Party Release"), set forth in Article VIII.D of the Plan, is an essential provision of the Plan. The Third-Party Release was critical in incentivizing the Released Parties to support the Plan and preventing potentially significant and time-consuming litigation regarding the parties' respective rights and interests. The Third-Party Release is: (i) consensual, (ii) in exchange for the good and valuable consideration provided by the Released Parties (other than with respect to parties in interest that were deemed to reject the Plan), (iii) a good-faith settlement and compromise of the claims and Causes of Action released by the Third-Party Release, (iv) in the best interests of the Debtors, their Estates, and their stakeholders and is important to the overall objectives of the Plan to finally resolve certain Claims among or against certain parties in interest in the Chapter 11 Cases, (v) fair, equitable, and reasonable, (vi) given and made after due notice and opportunity

for hearing, (vii) a bar to any of the Releasing Parties asserting any claim or Cause of Action released by the Third-Party Release against any of the Released Parties, and (viii) consistent with sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code.

41. The Third-Party Release is consensual because: (i) the Releasing Parties were provided adequate notice of the chapter 11 proceedings, the Plan, and the deadline to object to confirmation of the Plan; (ii) except for Holders of Claims that vote to accept the Plan, all Holders of Claims or Interests were given the opportunity to opt out of the Third-Party Release; and (iii) the release provisions of the Plan were conspicuous, emphasized with boldface type in the Plan, the Disclosure Statement, and the Ballots. Among other things, the Plan provides appropriate and specific disclosure with respect to the claims and Causes of Action that are subject to the Third-Party Release, and no other disclosure is necessary. The Debtors, as evidenced by the Solicitation Certificate, sent the Confirmation Hearing Notice to Holders of Claims, sent notice of the Third-Party Release to the Holders of Claims and Interests, and published such notice in the New York Times and Financial Times on October 2, 2023, and October 3, 2023, respectively. No other notice is necessary.

42. There is an identity of interests between the Debtors and the entities that will benefit from the Third-Party Release. Each of the Released Parties, as stakeholders and critical participants in the Debtors' Chapter 11 Cases and the Plan process, share a common goal with the Debtors in seeing the Plan, including the Sale Transaction, succeed. The scope of the Third-Party Release is also appropriately tailored to the facts and circumstances of the Chapter 11

Cases. For the reasons set forth above, each of the Released Parties has also made significant concessions and contributions to the Debtors' Chapter 11 Cases.

43. In light of the foregoing, the Third-Party Release is approved in its entirety.

**vi. Exculpation.**

44. The exculpation provisions set forth in Article VIII.E of the Plan are essential to the Plan. The record in the Chapter 11 Cases fully supports the exculpation and the exculpation provisions set forth in Article VIII.E of the Plan, which are appropriately tailored to protect the Exculpated Parties from unnecessary litigation and contain appropriate carve outs for actual fraud, willful misconduct, or gross negligence.

**vii. Injunction.**

45. The injunction provisions set forth in Article VIII.F of the Plan are essential to the Plan and are necessary to implement the Plan and to preserve and enforce the Sale Transaction, the transfer of the Acquired Assets to the Purchaser or a Designee free and clear of all claims and interests, the discharge, the Debtor Release, the Third-Party Release, and the exculpation provisions in Article VIII of the Plan. Such injunction provisions are appropriately tailored to achieve those purposes.

**viii. Gatekeeper Provision.**

46. Article VIII.F of the Plan, as modified by paragraph 44 of section II hereof, contains a provision that states no Person or Entity may commence or pursue a Claim or Cause of Action of any kind against the Debtors, the Post-Effective Date Debtors, the Exculpated Parties, or the Released Parties, as applicable, that is subject to, or is reasonably likely to be

subject to, Article VIII.C, Article VIII.D, or Article VIII.E of the Plan, without the Bankruptcy Court first determining that such Claim or Cause of Action was not subject to Article VIII.C, Article VIII.D, or Article VIII.E of the Plan and specifically authorizing such Person or Entity to bring such Claim or Cause of Action against any such Debtor, Post-Effective Date Debtor, Exculpated Party, or Released Party (the "Gatekeeper Provision"). The Bankruptcy Court shall have sole and exclusive jurisdiction to determine whether a claim or Cause of Action constitutes a direct or derivative claim, is colorable and, only to the extent legally permissible and as provided for in the Plan, shall have jurisdiction to adjudicate the underlying Claim or Cause of Action. The Bankruptcy Court finds that the gatekeeper Provision is a material and necessary term of the Plan. The Bankruptcy Court admitted the testimony of Roger Meltzer, independent director and member of the special committee of the board of directors of Debtor Cyxtera Technologies, Inc., regarding his investigation into potential claims and causes of actions against the Debtors' Related Parties. Mr. Meltzer credibly provided that, were it not for the inclusion of the Gatekeeper Provision in the Plan, the Debtors or other Released Parties, including the Purchaser, may be bogged down in vexatious, meritless litigation, thereby jeopardizing the consensual Debtor Release and Third-Party Release. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary, appropriate, and critical to the effective and efficient administration, implementation, and consummation of the Plan.

**ix. Preservation of Causes of Action.**

47. Article IV.E of the Plan appropriately provides for the preservation by the Debtors of certain Causes of Action in accordance with section 1123(b)(3)(B) of the Bankruptcy Code.

48. The Plan provides that all Causes of Action, other than the Causes of Action (i) acquired by the Purchaser or a Designee in accordance with the Purchase Agreement or (ii) released or exculpated (including, without limitation, by the Debtors) pursuant to the releases and exculpations contained in the Plan, shall automatically vest in the Post-Effective Date Debtors. The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. Additionally, the Plan and Plan Supplement provide meaningful disclosure with respect to the potential Causes of Action that the Post-Effective Date Debtors and/or Plan Administrator may retain, and all parties in interest received adequate notice with respect to such Causes of Action. The provisions regarding Causes of Action in the Plan are appropriate and in the best interests of the Debtors, their respective Estates, and Holders of Claims and Interests.

**x. Sale Transaction.**

49. The Plan appropriately provides for the consummation of the Sale Transaction pursuant to the Purchase Agreement and in accordance with section 1123(b)(4) of the

Bankruptcy Code. The Plan further provides for the distribution of the proceeds of the Sale Transaction to Holders of Claims and Interests in accordance with the Plan.

**xi. Lien Releases.**

50. Except as otherwise provided herein, the Plan, the Purchase Agreement, or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim or any related claim that may be asserted against a non-Debtor Affiliate, in satisfaction in full of the portion of the Secured Claim that is allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III.B.1 of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates or any non-Debtor Affiliate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Post-Effective Date Debtors and their successors and assigns, as set forth in Article VIII.B of the Plan (the "Lien Releases"). For the avoidance of doubt, any liens, claims, and encumbrances arising under the First Lien Credit Documents or the DIP Documents that may be asserted against a non-Debtor Affiliate shall be fully released and discharged on the Effective Date. The provisions of the Lien Releases are appropriate, fair, equitable, and reasonable and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. For the further avoidance of doubt, all liens in connection with the Receivables Program, to the extent applicable, shall be released in accordance with the Receivables Program Documents.

**xii. Additional Plan Provisions.**

51. The other discretionary provisions in the Plan, including the Plan Supplement, are appropriate and consistent with applicable provisions of the Bankruptcy Code, including, without limitation, provisions for the allowance of certain Claims and Interests, treatment of D&O Liability Insurance Policies, and the retention of court jurisdiction.

**c. Section 1123(d)—Cure of Defaults.**

52. Article V.D of the Plan provides for the satisfaction of all Cures under each Executory Contract and Unexpired Lease to be assumed in accordance with sections 365(b)(1) and 1123(b)(2) of the Bankruptcy Code. Any monetary or non-monetary defaults under each assumed Executory Contract or Unexpired Lease shall be satisfied, pursuant to sections 365(b)(1) and 1123(b)(2) of the Bankruptcy Code, by payment of the Cures in Cash, subject to the limitations described in Article V.D of the Plan, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. Any dispute regarding a Cure, the ability of the Post-Effective Date Debtors, the Purchaser, a Designee, or any assignee, as applicable, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, assumed and assigned, or assigned, as applicable, or any other matter pertaining to assumption, assumption and assignment, or assignment, as applicable, will be determined in accordance with the terms set forth in Article V.D of the Plan and applicable bankruptcy and non-bankruptcy law. As such, the Plan provides that the Debtors will cure or provide adequate assurance that the Debtors will promptly cure defaults with respect to assumed Executory

Contracts and Unexpired Leases in accordance with sections 365(b)(1) and 1123(b)(2) of the Bankruptcy Code. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

53. For the avoidance of doubt, the Purchaser or a Designee shall not have any obligation with respect to any Cure, and the Debtors or the Post-Effective Date Debtors, as applicable, shall pay any Cure as may be determined by Final Order or as otherwise agreed to by the relevant counterparty. To the extent any Cure dispute arises after the Effective Date with respect to an Executory Contract or Unexpired Lease assumed and assigned to the Purchaser or a Designee, the resolution of such Cure dispute shall be the sole responsibility of the Debtors or the Post-Effective Date Debtors, and neither the Purchaser nor the Designee, as applicable, shall have any liability in connection therewith.

**d. Section 1129(a)(2)—Compliance of the Debtors and Others with the Applicable Provisions of the Bankruptcy Code.**

54. The Debtors, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, and, thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

(i) is eligible to be a debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code;

(ii) has complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court; and

(iii) complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, the Local Rules, any applicable non-bankruptcy law, rule, and regulation, the Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

55. The Debtors and their agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with respect to the offering, issuance, and distribution of recoveries under the Plan and, therefore are not and, on account of such distributions, will not be liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made pursuant to the Plan so long as such distributions are made consistent with and pursuant to the Plan.

**e. Section 1129(a)(3)—Proposal of Plan in Good Faith.**

56. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, and the process leading to its formulation. The Debtors' good faith is evident from the facts and the record of the Chapter 11 Cases, the Disclosure Statement, the hearing to approve the Disclosure Statement, the Purchase Agreement, and the record of the Confirmation Hearing and other proceedings held in the Chapter 11 Cases.

57. The Plan is the product of good faith, arm's-length negotiations by and among the Debtors, the Debtors' directors, officers, and managers, the Purchaser, the Designees, and the other constituencies involved in the Chapter 11 Cases. The Plan itself and the process leading to its formulation provide independent evidence of the Debtors' and such other parties' good faith, serve the public interest, and assure fair treatment of holders of Claims and Interests. Consistent with the overriding purpose of chapter 11, the Debtors filed the Chapter 11 Cases with the belief

that the Debtors were in need of restructuring, and the Plan was negotiated and proposed with the intent to maximize stakeholder value and for no ulterior purpose. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

**f. Section 1129(a)(4)—Court Approval of Certain Payments as Reasonable.**

58. Any payment made or to be made by the Debtors or by a person issuing securities or acquiring property under the Plan for services or costs and expenses in connection with the Chapter 11 Cases or the Plan and incident to the Chapter 11 Cases, as applicable, has been approved by or is subject to the approval of the Court as reasonable. Accordingly, the Plan satisfies the requirements of section 1129(a)(4).

**g. Section 1129(a)(5)—Disclosure of Directors, Officers, and Managers and Consistency with the Interests of Creditors and Public Policy.**

59. Because the Plan provides for the liquidation of the Estates' remaining assets and resignation of the Debtors' officers, directors, and managers, section 1129(a)(5) of the Bankruptcy Code does not apply. To the extent section 1129(a)(5) of the Bankruptcy Code applies to the Post-Effective Date Debtors, the Debtors have satisfied the requirements of this provision by, among other things, disclosing the identity of the Plan Administrator. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

**h. Section 1129(a)(6)—Rate Changes.**

60. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and, accordingly, will not require governmental regulatory approval. Therefore, section 1129(a)(6) of the Bankruptcy Code does not apply to the Plan.

**i. Section 1129(a)(7)—Best Interests of Holders of Claims and Interests.**

61. The evidence in support of the Plan that was proffered or adduced at the Confirmation Hearing, and the facts and circumstances of the Chapter 11 Cases, establishes that each Holder of Allowed Claims or Interests in each Class will recover as much or more value under the Plan on account of such Claim or Interest, as of the Effective Date, than the amount such holder would receive if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. As a result, the Debtors have demonstrated that the Plan is in the best interests of their creditors and equity holders, and the requirements of section 1129(a)(7) of the Bankruptcy Code are satisfied.

**j. Section 1129(a)(8)—Acceptance by Certain Classes.**

62. The Plan does not satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code. The Deemed Accepting Classes are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Voting Classes have voted to accept the Plan. Holders of Intercompany Claims and Interests in Classes 6 and 7 are either Unimpaired and conclusively presumed to have accepted the Plan (to the extent reinstated) or are Impaired and conclusively deemed to reject the Plan (to the extent cancelled) and in either event, are not entitled to vote to accept or reject the Plan. The Deemed Rejecting Classes receive no recovery on account of their Claims or Interests pursuant to the Plan and are deemed to have rejected the Plan. Notwithstanding the foregoing, the Plan is confirmable because it satisfies section 1129(b) of the Bankruptcy Code.

**k. Section 1129(a)(9)—Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.**

63. The treatment of Administrative Claims, DIP Claims, Professional Fee Claims, Priority Tax Claims, Restructuring Expenses, and Receivables Program Claims under Article II of the Plan satisfies the requirements of and complies in all respects with section 1129(a)(9) of the Bankruptcy Code.

**l. Section 1129(a)(10)—Acceptance by at Least One Impaired Class.**

64. As set forth in the Voting Report, Holders of Claims in Class 3 and Class 4 voted to accept the Plan without regard to the votes of any insiders (as defined in section 101(31) the Bankruptcy Code). As such, there is at least one class of Claims that is Impaired under the Plan and has accepted the Plan, without including any insiders' acceptance of the Plan (as defined in the Bankruptcy Code). Accordingly, the requirements of section 1129(a)(10) of the Bankruptcy Code are satisfied.

**m. Section 1129(a)(11)—Feasibility of the Plan.**

65. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The Plan embodies a rational plan for the orderly wind down of the Debtors' estates and the delivery of distributions to holders of Allowed Claims following the consummation of the Sale Transaction. The financial projections attached to the Disclosure Statement and the other evidence supporting the Plan proffered or adduced by the Debtors at or before the Confirmation Hearing filed in connection with the Confirmation Hearing: (i) are reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (ii) utilize reasonable and appropriate methodologies and assumptions; (iii) have not been controverted by other persuasive

evidence; (iv) establish that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization except as provided in the Plan; and (v) establish that the Debtors and the Post-Effective Date Debtors and their Estates will have sufficient funds available to meet their obligations under the Plan. Accordingly, the Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code.

**n. Section 1129(a)(12)—Payment of Statutory Fees.**

66. Article II.C of the Plan provides that the Debtors shall pay all fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date, and on or after the Effective Date, each Post-Effective Date Debtor shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of the applicable Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

**o. Section 1129(a)(13)—Retiree Benefits.**

67. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code. Article IV.C.7 of the Plan provides that from and after the Effective Date, all retiree benefits, as defined in section 1114 of the Bankruptcy Code, if any, shall continue to be paid in accordance with applicable law.

**p. Section 1129(a)(14), (15), and (16)—Domestic Support Obligations, Individuals, and Nonprofit Corporations.**

68. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**q. Section 1129(b)—Confirmation of Plan Over Nonacceptance of Impaired Classes.**

69. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. ***First***, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. ***Second***, the Plan is fair and equitable with respect to the Deemed Rejecting Classes. The Plan has been proposed in good faith, is reasonable, and meets the requirements that (i) no Holder of any impaired Claim or Interest that is junior to such impaired Class will receive or retain any property under the Plan on account of such junior Claim or Interest and (ii) no Holder of a Claim or Interest in a Class senior to such impaired Class is receiving more than 100 percent on account of its Claim or Interest. Accordingly, the Plan is fair and equitable to all Holders of Claims and Interests in the Deemed Rejecting Classes. ***Third***, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated creditors in such Classes that have not accepted the Plan will receive substantially similar treatment on account of their Claim or Interest irrespective of Class. ***Finally***, Holders of Claims in Class 3 and Class 4 voted to accept the Plan in sufficient number and in sufficient amount to constitute accepting classes under the Bankruptcy Code. As a result, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code and can be confirmed.

**r. Section 1129(c)—Only One Plan.**

70. The Plan is the only plan filed in the Chapter 11 Cases and, accordingly, section 1129(c) of the Bankruptcy Code is satisfied.

**s. Section 1129(d)—Principal Purpose of the Plan is Not Avoidance of Taxes or Section 5 of the Securities Act.**

71. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. As evidenced by its terms, the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

**t. Section 1129(e)—Not Small Business Cases.**

72. The Chapter 11 Cases are not small business cases, and accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

**u. Satisfaction of Confirmation Requirements.**

73. Based upon the foregoing and all other pleadings and evidence proffered or adduced at or prior to the Confirmation Hearing, the Plan and the Debtors, as applicable, satisfy all the requirements for plan confirmation set forth in section 1129 of the Bankruptcy Code.

**v. Good Faith.**

74. The Debtors have proposed the Plan in good faith, with the legitimate and honest purpose of maximizing the value of the Debtors' Estates for the benefit of their stakeholders. The Plan is the product of extensive collaboration among the Debtors and key stakeholders and accomplishes this goal. Accordingly, the Debtors or the Post-Effective Date Debtors, as appropriate, have been, are, and will continue acting in good faith if they proceed to (i) consummate the Plan, the Asset Sale, and the agreements, settlements, transactions, and transfers contemplated thereby, including the transactions and transfers contemplated by the Purchase Agreement, and (ii) take the actions authorized and directed or contemplated by this

Confirmation Order. Therefore, the Plan has been proposed in good faith to achieve a result consistent with the objectives and purposes of the Bankruptcy Code.

**w. The Asset Sale.**

75. *Notice and Opportunity to Object.* As evidenced by the affidavits and certificates of service and publication notices previously filed with the Court, due, proper, timely, adequate, and sufficient notice of the Bidding Procedures Motion, the Bidding Procedures Order, the Bidding Procedures, the Asset Sale, the Purchase Agreement, the Sale Transaction, the Plan, the Plan Supplement, the Bid Protections (as defined in the Bid Protections Order), and the Confirmation Hearing have been provided in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and the Bidding Procedures Order to all interested Persons and entities, and such parties had an opportunity to appear, object, and be heard with respect thereto. All parties required to be given notice of the Asset Sale (including the deadline for filing objections to (i) approval of the Asset Sale and (ii) assumption and assumption and assignment of Executory Contracts and Unexpired Leases (collectively, the "Assumed Contracts") in accordance with the Plan and the Purchase Agreement, including any Cures), have been given due, proper, timely, and adequate notice. No other or further notice is required.

76. *Sufficiency of Marketing*. The Debtors and their professionals conducted a fair, open, and adequate prepetition and postpetition marketing and sale process as set forth in the Bojmel Declaration. The marketing and sale process was non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any Entity to make an offer, and the process

conducted by the Debtors obtained the highest or best value for the Debtors' Estates. There was no other transaction available or presented that would have yielded as favorable an economic result for the Debtors' Estates as that provided by the Asset Sale. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective buyers have been afforded a reasonable and fair opportunity to make a higher or otherwise better offer. The marketing and sale process undertaken by the Debtors and their professionals has been adequate and appropriate and reasonably calculated to maximize the value for the benefit of all stakeholders in all respects.

77. *Extensive Efforts by Debtors*. The Debtors have presented credible evidence that they and their professionals explored various strategic alternatives for the Debtors' businesses over an extended period of time and communicated with numerous parties regarding, among other potential transactions, a possible sale of all or substantially all of the Debtors' assets. The Asset Sale is the result of the Debtors' extensive efforts in seeking to maximize recoveries to the Debtors' Estates for the benefit of their creditors.

78. *Compliance with Bidding Procedures.* The Bidding Procedures were substantively and procedurally fair to all parties, including all potential bidders. The Bidding Procedures afforded adequate notice and a full, fair, and reasonable opportunity for any Person to make a higher or otherwise better offer to purchase the Acquired Assets. The marketing and sale process undertaken by the Debtors was in compliance with the Bidding Procedures and the Bidding Procedures Order, and the Debtors, the Purchaser, the Designees, and their respective

counsel and other advisors have complied with the Bidding Procedures and Bidding Procedures Order in all respects.

79. *Sound Business Purpose; Sale Highest or Best Offer*. Consummation of the Asset Sale constitutes a valid and sound exercise of the Debtors' business judgment, and such acts are in the best interests of the Debtors, the Estates, and the Holders of Claims and Interests and are reasonable and appropriate under the circumstance. This Bankruptcy Court finds that the Debtors have articulated good and sufficient business reasons for the Bankruptcy Court to authorize: (i) the consummation of the Asset Sale pursuant to the terms of the Purchase Agreement and the Plan, (ii) the assumption or assumption and assignment of the assumed Executory Contracts and Unexpired Leases in connection with the Asset Sale and pursuant to the Purchase Agreement; and (iii) the assumption of the Assumed Liabilities (as defined in the Purchase Agreement) in connection with the Asset Sale and pursuant to the Purchase Agreement and sections 1123(a)(5), 1123(b), and 1141(c) of the Bankruptcy Code.

80. Additionally: (i) the Purchaser (and any applicable Designee) submitted the highest and best bid for the Acquired Assets and was designated as the Successful Bidder in accordance with the Bidding Procedures and the Bidding Procedures Order; (ii) the total consideration provided by the Purchaser pursuant to the Purchase Agreement is the highest or best offer available to the Debtors; (iii) the Asset Sale presents the best opportunity to realize the maximum value for the Debtors' Estates; (iv) the Purchase Agreement and the consummation of the Asset Sale will provide a greater recovery for the Debtors' creditors than would be provided by any other presently available alternative, including liquidation under chapter 7 or 11 of the

Bankruptcy Code; (v) no other Person has offered to purchase the Acquired Assets for greater economic or non-economic value to the Debtors or their Estates; and (vi) the Debtors' consummation of the Asset Sale is reasonable and appropriate under the circumstances.

81. *Arm's-Length Sale and Purchaser's and Designee's Good Faith.* The Purchase Agreement and the Asset Sale were negotiated, proposed, and undertaken by the Debtors and the Purchaser (and any applicable Designee) at arm's length, without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Sale Transaction with the Purchaser is premised on the success of several separate deals, including the Singapore Transaction and the Germany Transaction (each as defined in the Purchase Agreement) to be implemented with the Designees and that will allow the Purchaser to acquire substantially all of the assets of the Debtors. The Purchaser and any Designee: (i) recognize that the Debtors were free to deal with any other party interested in making an offer, (ii) complied with the Bidding Procedures Order in all respects, and (iii) willingly subjected their bid to the competitive marketing and sale process. All payments to be made by the Purchaser or a Designee and other agreements or arrangements entered into by the Purchaser or a Designee in connection with the Asset Sale have been disclosed. Neither the Debtors nor the Purchaser or a Designee, nor any affiliate of the Purchaser or a Designee, has engaged in collusion or fraud, and the Purchaser or a Designee has not acted in a collusive manner with any Person or entity. As a result of the foregoing, each of the Purchaser and any applicable Designee is a "good faith purchaser" and, as such, is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code, including in the event this Confirmation Order or any portion thereof is reversed or modified on

appeal, and the Purchaser and any applicable Designee have proceeded in good faith in all respects in connection with the Asset Sale specifically and the Chapter 11 Cases generally.

82. *Sale in Best Interests*. The actions represented to have been taken, or to be taken by the Debtors, the Purchaser, and the Designees are appropriate under the circumstances of these Chapter 11 Cases and are in the best interests of the Debtors, their Estates, creditors, and other parties in interest. Approval of the Asset Sale at this time is in the best interests of the Debtors, their Estates, creditors, and other parties in interest.

83. *Title to the Assets*. The assets sought to be transferred and/or assigned, as applicable, by the Debtors to the Purchaser or a Designee pursuant to the Purchase Agreement are property of the Debtors' Estates, and good title thereto is presently vested in the Debtors' Estates within the meaning of section 541(a) of the Bankruptcy Code. Except as provided in the Purchase Agreement, the Debtors are the sole and rightful owners of such assets with all rights, title, and interests to the assets.

84. *Free and Clear; Discharge*. On the Effective Date, except as otherwise expressly set forth in the Purchase Agreement, to the fullest extent permitted by sections 1141(b) and (c) of the Bankruptcy Code, other than the Excluded Assets and Excluded Liabilities (each as defined in the Purchase Agreement), all property of the Debtors shall vest in the Purchaser or the applicable Designee, in accordance with the Purchase Agreement, free and clear of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, mortgages, deeds of trust, pledges, charges, security interests, of whatever kind or nature, rights of first refusal, rights of offset or recoupment, royalties,

conditional sales or title retention agreements, hypothecations, preferences, debts, easements, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign domestic governmental entity, taxes (including foreign, state and local taxes), covenants, restrictions, indentures, instruments, leases, options, off-sets, recoupments, claims for reimbursement or subrogation, contribution, indemnity or exoneration, encumbrances and other interests of any kind or nature whatsoever against the Debtors or any of the Debtors' assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employment or labor law claims or liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against any of the Debtors, any indemnification Claims or Liabilities relating to any act or omission of the Debtors or any other Person prior to the Effective Date or any Excluded Liabilities, any derivative, vicarious, transferee or successor liability claims, alter ego claims, *de facto* merger claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether known or unknown, contingent or matured, liquidated or unliquidated, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, legal or equitable, and whether imposed by agreement, understanding,

law, equity, or otherwise arising under or out of, in connection with, or in any way related to any of the Debtors, any of the Debtors' interests in the Acquired Assets or the operation of any of the Debtors' businesses before the Effective Date (collectively, excluding any Assumed Liabilities, the "Encumbrances").

85. *Not an Insider*. As of the date hereof, neither the Purchaser nor the Designees are "insiders" or "affiliates" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Debtors and the Purchaser or a Designee.

86. *Assumption of Contracts*. It is an exercise of the Debtors' reasonable and sound business judgment to assume, assume and assign, and assign the Assumed Contracts in connection with the consummation of the Asset Sale, and the assumption, assumption and assignment, and assignment of the Assumed Contracts is in the best interests of the Debtors, their Estates, creditors, and other parties in interest. The assumption, assumption and assignment, or assignment of the Assumed Contracts (i) allows the Debtors to sell their business to the Purchaser or a Designee as a going concern, (ii) limits the losses suffered by the non-debtor counterparties to the Assumed Contracts (each, a "Counterparty" and collectively, the "Counterparties"), and (iii) maximizes the recoveries to other creditors of the Debtors by limiting the amount of claims against the Debtors' Estates by avoiding the rejection of the Assumed Contracts.

87. Anti-assignment provisions in any Assumed Contract—including any provisions requiring rating agency confirmation, "no downgrade" letters, any other third party consent, or of

the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code—shall not restrict, limit, or prohibit the assumption, assignment, or sale of the Assumed Contracts and are unenforceable anti-assignment provisions in connection with the Asset Sale within the meaning of section 365(f) of the Bankruptcy Code. Provisions in any Assumed Contract requiring the Debtors or applicable counterparty (including the Purchaser or the applicable Designee) to meet a minimum net worth requirement or supply a guarantor meeting any such minimum net worth requirement, or providing for any such similar requirement, shall be deemed to be an anti-assignment provision and shall be unenforceable.

88. *Cure and Adequate Assurance.* The Debtors have cured or demonstrated their ability to cure any default with respect to any act or omission that occurred prior to the Effective Date under any of the Assumed Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code. Unless otherwise agreed to by the parties and subject to paragraph 57 of section II hereof, the proposed Cures plus any amounts accruing between the Assumption or Rejection Objection Deadline and the Effective Date are the amounts necessary to "cure" all "defaults" within the meaning of section 365(b) of the Bankruptcy Code under the Assumed Contracts as of the filing of the Plan Supplement. The promise by the Purchaser, the applicable Designee, or the Post-Effective Date Debtors to perform the obligations under their respective Assumed Contracts after the Effective Date shall constitute adequate assurance of their future performance of and under each of their respective Assumed Contracts within the meaning of sections 365(b)(1) and 365(f)(2), as applicable. All Counterparties that did not timely file an objection to the assumption or assumption and assignment of their respective Assumed

Contract(s) shall be deemed to have consented to the assumption or assumption and assignment, as applicable, thereof. Upon payment of the Cures and subject to paragraph 57 of section II hereof, the Debtors, the Purchaser, and any applicable Designee, as applicable, shall be deemed to have met all requirements of section 365(b) of the Bankruptcy Code with respect to each of the Assumed Contracts.

89. *Authority*. The Debtors: (i) have full power and authority to execute and assume the Purchase Agreement and all other documents contemplated thereby, (ii) possess all of the power and authority necessary to consummate the transactions contemplated by the Purchase Agreement subject to the terms of the Plan and this Confirmation Order, and (iii) have taken all corporate action necessary to authorize and approve the Purchase Agreement, the sale of the assets contemplated therein, and all other actions required to be performed by the Debtors in order to consummate the Asset Sale. No consents or approvals, other than those already obtained or expressly provided for in the Purchase Agreement or this Confirmation Order, are required for the Debtors to consummate the Asset Sale.

90. *No Fraudulent Transfer*. The total consideration provided by the Purchaser and/or a Designee pursuant to the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transfer Act, and any other applicable law, and may not be avoided under section 363(n) of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, the District of Columbia, or any other applicable law. The Purchase Agreement was not entered into, and the

Asset Sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors, the Purchaser, nor any Designee entered into the Purchase Agreement with any fraudulent or other improper purpose. Neither the Debtors, the Purchaser, nor a Designee engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Asset Sale to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n) or under any other law of the United States, any state, territory, possession thereof, the District of Columbia or any other applicable law. The Purchase Agreement is a valid and binding contract among the Debtors, the Purchaser, and/or any applicable Designee and shall be enforceable pursuant to its terms.

**x. Disclosure: Agreements and Other Documents.**

91. The Debtors have disclosed all material facts regarding the Plan and with respect to consummation of the Restructuring Transactions, including: (i) the Purchase Agreement; (ii) Plan Administrator Agreement and the identities of the Plan Administrator; (iii) the method and manner of distributions under the Plan; (iv) the adoption, execution, and implementation of the other matters provided for under the Plan, including those involving corporate action to be taken by or required of the Debtors or Post-Effective Date Debtors, as applicable; (v) the exemption under section 1146(a) of the Bankruptcy Code; (vi) the retained Causes of Action; and (vii) the adoption, execution, and delivery of all contracts, leases, instruments, securities, releases, indentures, and other agreements related to any of the foregoing.

**y. Conditions to Effective Date.**

92. The Plan shall not become effective unless and until the conditions set forth in Article IX.A of the Plan have been satisfied or waived pursuant to Article IX.B of the Plan.

**z. Implementation.**

93. All documents and agreements necessary to implement the transactions contemplated by the Plan, including the Purchase Agreement and those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arm's-length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal, state, or local law. The documents and agreements are essential elements of the Plan, and entry into and consummation of the transactions contemplated by each such document or agreement are in the best interests of the Debtors, the Estates, and the Holders of Claims and Interests. The Debtors have exercised reasonable business judgment in determining which documents and agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The Debtors are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

**aa. Vesting of Assets.**

94. Except as otherwise provided in this the Plan, the Confirmation Order, the Purchase Agreement, or any other agreement, instrument, or other document incorporated therein or entered into in connection with or pursuant to the Plan or the Plan Supplement, on the

Effective Date, all property of the Estates (other than the GUC Trust Assets) shall vest in the Post-Effective Date Debtors. Such assets shall be held free and clear of all liens, claims, charges, or other encumbrances unless expressly provided otherwise by the Plan or this Confirmation Order. Any distributions to be made under the Plan from such assets shall be made by the Plan Administrator or its designee. The Post-Effective Date Debtors, the Plan Administrator, and the GUC Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

**bb. Treatment of Executory Contracts and Unexpired Leases.**

95. Pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code, the Plan provides for the assumption, assumption and assignment, assignment, or rejection of certain Executory Contracts and Unexpired Leases, effective as of the Effective Date except as otherwise provided therein or in a prior or pending notice, motion, and/or order. The Debtors' determinations regarding the assumption, assumption and assignment, assignment, or rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims and Interests, and other parties in interest in the Chapter 11 Cases.

**cc. Objections.**

96. All objections, responses, reservations, statements, and comments in opposition to the Plan, including the Asset Sale and objections to the assumption and assumption and assignment of any executory contracts or unexpired leases, other than those resolved, adjourned,

or withdrawn with prejudice prior to, or on the record at, the Confirmation Hearing, are overruled on the merits in all respects. All withdrawn objections, if any, are deemed withdrawn with prejudice. All objections to Confirmation not filed and served prior to the deadline for filing objections to the Plan set forth in the Confirmation Hearing Notice, if any, are deemed waived and shall not be considered by the Court.

97. All parties have had a full and fair opportunity to litigate all issues raised or might have been raised in the objections to Confirmation of the Plan, and the objections have been fully and fairly litigated or resolved, including by agreed-upon reservations of rights as set forth in this Confirmation Order.

**R. Provisions Regarding Seacoast National Bank.**

98. In accordance with and pursuant to the Purchase Agreement and the Plan, the Debtors will assume, and will assign to the Purchaser, that certain Master Equipment Lease Agreement #32133, dated December 17, 2020, including Equipment Schedule No. 4 (together, the "Seacoast MELA"), originally entered into between Debtors Cyxtera DC Holdings Inc. and Cyxtera Communications LLC (with respect to Equipment Schedule No. 4), as lessees, and Liberty Commercial Finance LLC ("LCF"), as lessor, for which Seacoast National Bank ("Seacoast") has succeeded to the interests of LCF. The Debtors (a) shall pay all Cure amounts owed in connection with the Seacoast MELA in accordance with section 365 of the Bankruptcy Code and (b) until Closing, shall pay all amounts arising under the Seacoast MELA in the ordinary course of business to Seacoast through its designated servicer, Wingspire Equipment Finance, or such other designee that Seacoast will provide in writing to the Debtors. Effective as

of the Closing, upon assignment of the Seacoast MELA to the Purchaser, (i) in accordance with and pursuant to the terms of the Purchase Agreement, the Purchaser shall assume all of the Debtors' obligations arising under the Seacoast MELA from and after the date of the Closing, and (ii) the Purchaser will remit all payment obligations directly to Seacoast (and Seacoast shall provide the Purchaser with payment instructions contemporaneous with the Closing). For the avoidance of doubt, the Purchaser is not assuming any guaranty or related obligations of Cyxtera Technologies, Inc. in favor of Seacoast. At or following the Closing, the Purchaser (or the Debtors, as applicable) may assign the Seacoast MELA to a subsidiary or affiliate of Purchaser, *provided* that Purchaser either provides Seacoast with a written guarantee of all obligations under the Seacoast MELA or assumes in writing all liabilities under the Seacoast MELA. The Purchaser may not assign the Seacoast MELA to any other third parties without written consent from Seacoast.

## II. ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

**A. Confirmation of the Plan.**

1. This Confirmation Order confirms the Plan in its entirety as modified herein.

2. This Confirmation Order approves the Plan Supplement, including the documents contained therein, as they may be amended or supplemented through and including the Effective Date in accordance with and as permitted by the Plan. The terms of the Plan, the Plan

Supplement, and the exhibits thereto are incorporated herein by reference and are an integral part of this Confirmation Order.

3. The terms of the Plan, the Plan Supplement, all exhibits thereto, and this Confirmation Order shall be effective and binding as of the Effective Date on all parties in interest, including, but not limited to, the following: (i) the Debtors; (ii) Holders of DIP Claims; (iii) Holders of Receivables Program Claims; (iv) Holders of First Lien Claims; (v) Holders of General Unsecured Claims; (vi) the Committee; (vii) the Purchaser or a Designee; and (viii) all other Holders of Claims and Interests.

4. The failure to include or refer to any particular article, section, or provision of the Plan, the Plan Supplement, the Purchase Agreement, or any related document, agreement, or exhibit does not impair the effectiveness of that article, section, or provision, it being the intent of the Court that the Plan, the Plan Supplement, the Purchase Agreement, and any related document, agreement, or exhibit are approved in their entirety.

**B. Objections.**

5. To the extent that any objections (including any reservations of rights contained therein) to Confirmation, including approval of the Asset Sale, have not been withdrawn, waived, or settled before entry of this Confirmation Order, are not cured by the relief granted in this Confirmation Order, or have not been otherwise resolved as stated on the record of the Confirmation Hearing, all such objections (including any reservation of rights contained therein) are hereby overruled in their entirety and on their merits in all respects.

6. All objections to Confirmation, including approval of the Asset Sale, not filed and served prior to the deadline for filing objections to the Plan set forth in the Confirmation Hearing Notice, are deemed waived and shall not be considered by the Court.

**C. Approval of the Asset Sale.**

7. The Debtors have provided adequate and sufficient notice of the Asset Sale, including the transactions contemplated by the Purchase Agreement, under the facts and circumstances of these cases, including through the Sale Transaction Notice. Upon entry of this Confirmation Order, pursuant to sections 105(a), 363, 1123 and 1141 of the Bankruptcy Code, the Asset Sale set forth in the Purchase Agreement, and all transactions, covenants, agreements, conditions, and releases contemplated thereby, are authorized and approved. The Debtors are authorized, but not directed, to enter into and perform under the Purchase Agreement without further order of this Court. The Debtors, Purchaser, any Designee, and each other party to the Purchase Agreement are hereby authorized, without further order of the Court, to take any and all actions necessary or appropriate to (i) consummate the Asset Sale in accordance with the Plan, the DIP Credit Agreement, the DIP Order, the Purchase Agreement, and this Confirmation Order; (ii) perform, consummate, implement, and close the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Sale pursuant to the Purchase Agreement; (iii) perform, consummate, and implement any preparatory transactions and any other actions as may be necessary or appropriate to effect a corporate restructuring of the Debtors' and the Post-Effective Date Debtors' respective businesses or corporate structure in order to effectuate the Asset Sale, including,

without limitation, by issuance of any necessary Securities, notes, instruments, certificates, and other documents or any necessary intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, liquidations, or other corporate transactions; and (iv) apply the proceeds of the Asset Sale in accordance with the terms of the DIP Credit Agreement and the Plan. Entry of this Confirmation Order shall constitute approval of the Asset Sale and Purchase Agreement. The Debtors shall report and pay all taxes, including sales tax on any retail-related assets located and sold within the State of California, to the extent lawfully owed as a result of the Asset Sale (*i.e.*, any taxes not exempt under section 1146 of the Bankruptcy Code).

8. The Debtors, the Post-Effective Date Debtors, and the Plan Administrator, as applicable, each acting by and through their respective officers, employees, and agents, as applicable, are authorized to take all reasonable actions required under the Plan, the Plan Supplement, and the Purchase Agreement that are necessary or appropriate to effectuate the Plan and the transactions contemplated therein, including the Asset Sale.

9. Each federal, state, commonwealth, local, foreign, or other governmental agency is directed and authorized to accept for filing and/or recording any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan, the Purchase Agreement, and this Confirmation Order.

10. The Purchase Agreement and any related documents or other instruments may be modified, amended, or supplemented by the parties thereto, subject to the consent rights set forth

therein, in non-material ways in accordance with the terms thereof, without further order of the Court.

11. Notwithstanding anything herein to the contrary but subject in all respects to the Purchase Agreement, effective on and subject to the closing of the Asset Sale (the "Closing," and the date thereof, the "Closing Date"):

a. Pursuant to sections 105(a), 363(b), 363(f), 1123(b)(4), and 1141(c) of the Bankruptcy Code, the Acquired Assets shall be transferred to the Purchaser or a Designee free and clear of any and all Liens, Claims, Interests, charges, and other Encumbrances of any kind or nature (except for those Liens, Claims, Interests, charges, or other Encumbrances expressly assumed by the Purchaser pursuant to the terms of the Purchase Agreement);[5]

b. consistent with the DIP Credit Agreement and the DIP Orders, as applicable, all Liens, Claims, Interests, charges, and other encumbrances on the Acquired Assets securing any obligations of the Debtors or the Post-Effective Date Debtors prior to the Closing shall attach to the proceeds of the Asset Sale, in the order of their priority, with the same validity, force, and effect, if any, that they had against such Acquired Assets prior to the Closing;

c. neither the Purchaser, a Designee, nor any of their respective affiliates are or shall be deemed to: (i) be legal successors to the Debtors or the Post-Effective Date Debtors or their estates by reason of any theory of law or equity, (ii) have, *de facto* or otherwise, merged with or into the Debtors or the Post-Effective Date Debtors, or (iii) be an alter ego or a mere continuation or substantial continuation or successor of the Debtors or the Post-Effective Date Debtors in any respect;

d. except as otherwise expressly set forth in the Purchase Agreement, the Purchaser, the Designees, and each of their respective successors, affiliates, and assigns shall have no liability for or obligations with respect to any Encumbrance, and all persons and entities holding Encumbrances are hereby forever barred, estopped, and permanently enjoined from

[5] For the avoidance of doubt, all capitalized terms used but not defined in this paragraph 11 shall have the meaning ascribed to such terms in the Purchase Agreement.

(i) asserting such Encumbrances against the Purchaser, the Designees, and each of their successors, affiliates, assigns, and/or any of their property or the Acquired Assets and (ii) interfering with the Purchaser's or Designees' title to or use and enjoyment of the Acquired Asset based on or related to any Encumbrance;

e. the Purchaser and Designees expressly reserve any and all rights, defenses, and objections with regard to the Assumed Liabilities in accordance with the Purchase Agreement;

f. solely with respect to the Acquired Assets and not with respect to any proceeds thereof, each holder of any Liens, Claims, Interests, charges, and other encumbrances of any kind or nature against the Acquired Assets shall be deemed to have waived and released such Liens, Claims, Interests, charges, and other Encumbrances of any kind or nature, without regard to whether such holder has executed or filed any applicable release. Any such holder of such Liens, Claims, Interests, charges, and other Encumbrances of any kind or nature is directed to execute and deliver any waivers, releases, or other related documentation reasonably requested by the Debtors, the Purchaser, or a Designee to evidence the release of its Liens, Claims, Interests, charges, and other Encumbrances of any kind or nature in the Acquired Assets; *provided* that such documentation does not release any Liens, Claims, Interests, charges, and other encumbrances in the proceeds of the Acquired Assets. Any person or entity that has filed any financing statements, mortgages, deeds of trust, mechanic's liens, lis pendens, or any other documents or agreements evidencing a Lien on the Acquired Assets is directed to deliver to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all Liens that the person or entity has with respect to the Acquired Assets (collectively, the "Release Documents");

g. in the event that such termination statements, instruments of satisfaction, or releases of all Liens are not filed in accordance with the foregoing paragraph, each of the Purchaser and the Designees, as may be applicable, is hereby authorized to (i) execute and file such Release Documents on behalf of such person; (ii) file, register, or otherwise record a certified copy of this Confirmation Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens against the Acquired Assets of any kind or nature whatsoever but shall not release any Liens in respect of the proceeds of the Acquired Assets; and (iii) seek in this Court or any other court of competent

jurisdiction to compel appropriate persons to execute the appropriate Release Documents; *provided* that, notwithstanding anything in this Confirmation Order or the Purchase Agreement to the contrary, the provisions of this Confirmation Order shall be self-executing, and none of the Debtors, the Plan Administrator, the Post-Effective Date Debtors, or the Purchaser shall be required to execute or file any Release Documents in order to effectuate, consummate, or implement the provisions of this Confirmation Order;

h. this Confirmation Order, if filed, registered, or otherwise recorded, shall be effective as a conclusive determination that all Liens, Claims, Interests, charges, and other Encumbrances of any kind or nature existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected and that such Liens, Claims, Interests, charges, and other Encumbrances have attached to the proceeds of the Acquired Assets, and this Confirmation Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, county, or local government agency, department, or office; *provided* that this Confirmation Order shall be binding and effective regardless of whether any such filing, registration, or recordation occurs;

i. this Confirmation Order is and shall be binding upon and govern the acts of all persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrar of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, county, and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets (all such entities being referred to as "Recording Officers"). Each Recording Officer is authorized, from and after the Effective Date, to strike all recorded Liens (other than Permitted Liens) on or against the Acquired Assets (other than Assumed Liabilities) from their records, official or otherwise, without further order of the Court or act of any Person, in accordance with the Plan, the Purchase Agreement, and this Confirmation Order. Each Recording Officer is authorized and directed (i) to file, record, and/or register any and all documents and instruments presented to consummate or memorialize the Asset Sale and (ii) to accept and rely on this Confirmation Order as the sole and sufficient evidence of the transaction set forth herein;

j. no Bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Asset Sale; and

k. the Purchaser and the Designees are good-faith purchasers under section 363(m) of the Bankruptcy Code and, as such, are entitled to all of the protections afforded thereby.

**D. No Successor or Other Derivative Liability.**

12. By virtue of the Sale Transaction, the Purchaser, any Designee, and each of their respective affiliates, successors, and assigns, in accordance with the Purchase Agreement, shall not be deemed or considered to: (i) be a legal successor, or otherwise be deemed a successor to any of the Debtors; (ii) have, *de facto* or otherwise, merged with or into any or all Debtors; (iii) be consolidated with the Debtors or their Estates; or (iv) be an alter ego or a continuation or substantial continuation, or be holding itself out as a mere continuation, of any of the Debtors or their respective Estates, businesses, or operations, or any enterprise of the Debtors, in each case by any law or equity, and, other than as set forth in the Purchase Agreement, the Purchaser has not assumed nor is in any way responsible for any liability or obligation of the Debtors or the Debtors' Estates, except with respect to the Assumed Liabilities. Except as expressly set forth in the Purchase Agreement, the Purchaser and its affiliates, successors, and assigns, including any Designee (and its affiliates, successors, and assigns) in accordance with the Purchase Agreement, shall have no successor, transferee, or vicarious liability of any kind or character, including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee, or transferee liability, labor, product liability, employment, *de facto* merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date (as defined in the Purchase Agreement), now existing or

hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors, or any obligations of the Debtors arising prior to the Effective Date, including, without limitation, liabilities on account of any taxes or other Governmental Authority fees, contributions, or surcharges, in each case arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of Purchaser or the Purchaser's assets prior to the Closing Date or arising based on actions of the Debtors taken after the Closing Date.

13. Except as expressly set forth herein or in the Purchase Agreement, the Purchaser and its respective successors, affiliates, and assigns, including any Designee in accordance with the Purchase Agreement, shall have no liability for any Claim against the Debtors, the Debtors' Estates, a non-Debtor Affiliate, or Excluded Liabilities, whether known or unknown as of the Effective Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee, successor, alter ego, or otherwise, of any kind, nature, or character whatsoever, by reason of any theory of law or equity, including Claims or Excluded Liabilities arising under, without limitation: (i) any employment or labor agreements or the termination thereof relating to the Debtors; (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of or related to any of the Debtors or the Debtors' affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, the termination of any of the foregoing; (iii) the Debtors' business operations or the cessation thereof; (iv) any litigation involving one or more of the Debtors; and (v) any employee, workers' compensation, occupational disease, or unemployment or temporary-disability-related law,

including, without limitation, claims that might otherwise arise under or pursuant to: (A) the Employee Retirement Income Security Act of 1974, as amended; (B) the Fair Labor Standards Act; (C) Title VII of the Civil Rights Act of 1964; (D) the Federal Rehabilitation Act of 1973; (E) the National Labor Relations Act; (F) the Worker Adjustment and Retraining Notification Act of 1988; (G) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended; (H) the Americans with Disabilities Act of 1990; (I) the Consolidated Omnibus Budget Reconciliation Act of 1985; (J) the Multiemployer Pension Plan Amendments Act of 1980; (K) state and local discrimination laws; (L) state and local unemployment compensation laws or any other similar state and local laws; (M) state workers' compensation laws; (N) any other state, local, or federal employee benefit laws, regulations, or rules or other state, local, or federal laws, regulations, or rules relating to, wages, benefits, employment, or termination of employment with any or all Debtors or any predecessors; (O) any antitrust laws; (P) any product liability or similar laws, whether state or federal or otherwise; (Q) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (R) the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §§ 499a et seq.; (S) any bulk sales or similar laws; (T) any federal, state, or local tax statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (U) the Claims or Liabilities relating to conduct prior to the Effective Date brought by a consumer borrower against any Debtor for the violation of (i) The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.), (ii) The Fair Credit

Reporting Act (15 U.S.C. § 1681), (iii) The Truth in Lending Act (12 C.F.R. § 1026), (iv) The Fair Debt Collection Practices Act (15 U.S.C. §§ 1692–1692p), and (v) any and all state law equivalents of the foregoing clauses (i) through (iv); (V) any other Claim or Cause of Action for fraudulent inducement of a consumer borrower to enter into a loan; and (W) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or any other theory of or related to successor liability.

**E. Injunction.**

14. All Persons and Entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Acquired Assets to the Purchaser or a Designee in accordance with the Purchase Agreement and this Confirmation Order. On and after the Closing Date, except for Persons or Entities entitled to enforce Assumed Liabilities and Permitted Encumbrances (each as defined in the Purchase Agreement), all Persons and Entities (including, but not limited to, the Debtors and/or their respective successors (including any trustee), creditors, investors, certificate holders, securitization trustees, borrowers, current and former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state, and local officials, including those maintaining any authority relating to any environmental, health, and safety laws, and the successors and assigns of each of the foregoing) holding Claims against the Acquired Assets or against the Debtors in respect of the Acquired Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any Claims of any kind or nature whatsoever (including, without limitation, Claims or liabilities

relating to any act or omission of the Debtors prior to the Effective Date, and any indemnification Claims or Liabilities relating to any act or omission of the Debtors or any other Person or Entity prior to the Effective Date) against the Purchaser, any affiliate of the Purchaser, a Designee in accordance with the Purchase Agreement, or any of their respective property, successors, and assigns, or the Acquired Assets, as an alleged successor or on any other grounds.

15. Upon the transfer or assignment of the Assumed Contracts, as applicable, to the Purchaser or a Designee in accordance with the Purchase Agreement, each Counterparty to an Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting against the Acquired Assets, the Purchaser, any Designee, each of their respective affiliates, or each of its or their respective property (a) any setoff, defense, recoupment, Claim, counterclaim or default asserted or assertable against, or otherwise seeking to delay, defer, or impair any rights of the Purchaser or any Designee in accordance with the Purchase Agreement with respect to the Acquired Assets with respect to an act or omission of, the Debtors, or (b) any rent acceleration, assignment fee, default, breach, Claim, or pecuniary loss or condition to assignment or transfer arising under or related to an Assumed Contract that is being assumed and assigned or assigned in accordance with the Purchase Agreement existing as of the Closing Date, or arising by reason of the Closing Date. No delay or failure of performance under or in respect of any Excluded Contract (as defined in the Purchase Agreement) will (i) affect any right of the Purchaser or a Designee in accordance with the Purchase Agreement, or any obligation of any other Person or Entity, including any Counterparty, under any Assumed Contract that is being assumed and assigned or assigned in accordance with the Purchase Agreement or (ii) permit, result in, or give

rise to any setoff, delay, deferral, defense, recoupment, Claim, interest, counterclaim, default, or other impairment of the right to receive any payment or otherwise to enforce any other rights under any Assumed Contract that is being assumed and assigned or assigned in accordance with the Purchase Agreement.

16. No Person or Entity shall assert, and the Purchaser, any Designee in accordance with the Purchase Agreement, and the Acquired Assets shall not be subject to, any defaults, breaches, counterclaims, offsets, defenses (whether contractual or otherwise, including, without limitation, any right of recoupment), Claims, or liabilities of any kind or nature whatsoever to delay, defer, or impair any right of the Purchaser, any Designee in accordance with the Purchase Agreement, or the Debtors, or any obligation of any other Person or Entity, under or with respect to any Acquired Assets (including, without limitation, an Assumed Contract), with respect to any act or omission that occurred prior to the Closing Date or with respect to any Excluded Contract or any obligation of the Debtors that is not an Assumed Liability.

**F. Fair Purchase Price.**

17. The total consideration provided by the Purchaser and/or a Designee pursuant to the Purchase Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transfer Act, and any other applicable law and may not be avoided under section 363(n) of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, the District of Columbia, or any other applicable law. The Purchase Agreement and the Asset Sale are not subject to rejection or avoidance (whether

through any avoidance, fraudulent transfer, preference or recovery, claim, action, or proceeding arising under chapter 5 of the Bankruptcy Code or under any similar state or federal law or any other cause of action) by the Debtors, any chapter 7 or chapter 11 trustee of the Debtors' bankruptcy estates, or any other person or entity. The Purchase Agreement, this Confirmation Order, and the Debtors' obligations therein and herein shall not be altered, impaired, amended, rejected, discharged, or otherwise affected by any chapter 11 plan proposed or confirmed in these bankruptcy cases, including the Plan, any other order confirming any chapter 11 plan, or any subsequent order of this Court without the prior written consent of the Purchaser or the applicable Designees (solely to the extent expressly provided for in the Designation Agreement[6]).

18. Neither the Debtors, the Purchaser, a Designee, nor any parent or affiliate of the Purchaser or of a Designee has engaged in any conduct that would cause or permit the Purchase Agreement or the Asset Sale to be avoided under section 363(n) of the Bankruptcy Code.

**G. Surrender of Possession.**

19. All Persons that are currently in possession of some or all of the Acquired Assets are hereby directed to surrender possession of such Acquired Assets to the Debtors as of the Effective Date or at such later time as the Purchaser or a Designee, the Post-Effective Date Debtors, or the Plan Administrator reasonably requests. To the extent required by the Purchase Agreement, the Debtors are authorized to exercise commercially reasonable efforts to assist the Purchaser or a Designee in assuring that all Persons that are presently, or on the Effective Date

[6] "Designation Agreement" has the meaning ascribed to it in the Purchase Agreement.

may be, in possession of some or all of the Acquired Assets will surrender possession of the Acquired Assets to either (i) the Debtors before the Effective Date or (ii) the Purchaser or a Designee on or after the Effective Date.

**H. Transfer of Property.**

20. On the Effective Date, this Confirmation Order shall be considered, and constitute for any and all purposes, a legal, valid, binding, effective, and complete general assignment, conveyance, and transfer of the Acquired Assets and a bill of sale or assignment transferring indefeasible title in the Acquired Assets in connection with the Asset Sale.

**I. No Discriminatory Treatment.**

21. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchaser or a Designee on account of the filing or pendency of the Chapter 11 Cases or the consummation of the transactions contemplated by the Purchase Agreement.

**J. Not an Insider.**

22. As of the date hereof, neither the Purchaser nor any Designee is an "insider" or "affiliate" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between the Debtors and the Purchaser or a Designee.

**K. Anti-Assignment Provisions.**

23. All anti-assignment provisions in any Assumed Contract shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts and are unenforceable anti-assignment provisions in connection with the Asset Sale within the meaning of section 365(f) of the Bankruptcy Code.

**L. Plan Modifications.**

24. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are presumed to accept the Plan, subject to modifications, if any. No Holder of a Claim who has voted to accept the Plan shall be permitted to change its vote as a consequence of the Plan or Plan Supplement modifications. All modifications to the Plan or Plan Supplement made after the Voting Deadline are hereby approved pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

**M. Post-Confirmation Modification of the Plan and Purchase Agreement.**

25. Subject to the limitations and terms contained in Article X.A and B of the Plan, the Debtors are hereby authorized to amend or modify the Plan at any time prior to the substantial consummation of the Plan, but only in accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, without further order of this Court, subject to the consent rights in the Plan.

26. The Purchase Agreement and related agreements, documents, or other instruments executed in connection therewith may be modified, amended, or supplemented by the parties

thereto in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court and subject to the consent rights set forth in the Plan.

**N. Plan Classification Controlling.**

27. The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder and the classifications set forth on the ballots tendered to or returned by the Holders of Claims or Interests in connection with voting on the Plan: (i) were set forth thereon solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent and in no event shall be deemed to modify or otherwise affect the actual classification of Claims and Interests under the Plan for distribution purposes; (iii) may not be relied upon by any Holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (iv) shall not be binding on the Debtors except for voting purposes.

**O. General Settlement of Claims and Interests.**

28. To the greatest extent permissible under the Bankruptcy Code, and in consideration of the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan. To the greatest extent permissible under the Bankruptcy Code, the Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, and controversies, and entry of the Confirmation Order shall constitute the Court's approval of such compromise and settlement, as well as a finding by the Court that such settlement and

compromise is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Allowed Interests (as applicable) in any Class are intended to be and shall be final.

**P. Restructuring Transactions.**

29. On the Effective Date, the applicable Debtors or the Post-Effective Date Debtors, as applicable, shall enter into any transaction and shall take any actions as may be necessary or appropriate to effect the transactions described herein, including, as applicable, consummation of any sales of any assets vested with the Post-Effective Date Debtors, winding down the Estates, closing the Chapter 11 Cases, monetizing assets, the cancellation of all securities, notes, instruments, certificates, and other documents pursuant to the Plan, one or more mergers, amalgamations, consolidations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Plan Administrator reasonably determines to be necessary to consummate the Plan (collectively, the "Restructuring Transactions"). The actions to implement the Restructuring Transactions may include: (i) the good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan; (ii) authorization for the Debtors and Post-Effective Date Debtors, as applicable, to take all actions necessary to effectuate the Plan and the Asset Sale, including any restructuring transaction steps set forth in the Plan Supplement; (iii) the funding and sources of consideration for the Plan distributions; (iv) preservation of the Debtors' corporate existence following the Effective Date (except as otherwise provided in the Plan and

solely for the purposes set forth in the Plan); (v) the vesting of the Estates' assets in the respective Post-Effective Date Debtors except as otherwise provided in the Purchase Agreement; (vi) the cancellation of existing agreements and Interests; (vii) the effectuation and implementation of other documents and agreements contemplated by, or necessary to effectuate, the transactions contemplated by the Plan; (viii) the assumption of certain employment obligations; (ix) the preservation of certain Claims and Causes of Action not released pursuant to the Plan, if applicable; (x) the closing of certain of the Chapter 11 Cases; (xi) consummation of the Sale Transaction, and entry into and performance under the Purchase Agreement and related documents; (xii) appointment of the Plan Administrator; (xiii) winding down of the Debtors' estates following consummation of the Asset Sale; (xiv) creation of the GUC Trust and entry into and performance under the GUC Trust Agreement; and (xv) preservation of the D&O Liability Insurance Policies.

**Q. Corporate Action.**

30. Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, including, as applicable: (i) implementation of the Restructuring Transactions; (ii) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date); (iii) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (iv) consummation of the Sale Transaction pursuant to the Purchase Agreement and related documents; (v) formation of the Post-Effective Date Debtors and selection of the Plan Administrator; and (vi) all other acts or actions contemplated or reasonably necessary or appropriate to promptly consummate the

Restructuring Transactions contemplated by the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Post-Effective Date Debtors and any corporate action required by the Debtors or the Post-Effective Date Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security Holders, directors, officers, or managers of the Debtors or the Post-Effective Date Debtors. On or prior to the Effective Date, as applicable, the appropriate officers of the Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable, shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Post-Effective Date Debtors. The authorizations and approvals contemplated by Article V.H of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

**R. Vesting of Assets in the Post-Effective Date Debtors and Continued Corporate Existence.**

31. Except as otherwise provided in the Plan, the Confirmation Order, the Purchase Agreement, or any agreement, instrument, or other document incorporated herein, or entered into in connection with or pursuant to, the Plan, the Plan Supplement, or the Purchase Agreement, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan (other than the GUC Trust Assets) shall vest in each respective Post-Effective Date Debtor, free and clear of all Liens, Claims, charges, Causes of Action, or other encumbrances. On and after the Effective Date, except as otherwise provided in

the Plan, the Confirmation Order, the Purchase Agreement, or any agreement, instrument, or other document incorporated herein, each Post-Effective Date Debtor may operate its business and use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

32. On and after the Effective Date, the Post-Effective Date Debtors shall continue in existence for purposes of (i) winding down the Debtors' business and affairs as expeditiously as reasonably possible as authorized by the Bankruptcy Court; (ii) resolving Disputed Claims; (iii) making distributions on account of Allowed Claims as provided hereunder; (iv) establishing and funding the Distribution Reserve Accounts; (v) enforcing and prosecuting claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith; (vi) filing appropriate tax returns; (vii) complying with any continuing obligations under the Purchase Agreement; and (viii) administering the Plan in an efficacious manner. The Post-Effective Date Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (x) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (y) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

33. Notwithstanding anything to the contrary in the Plan, on the Effective Date, any Cause of Action not transferred to the Purchaser or a Designee in accordance with the Purchase Agreement or settled, released, discharged, enjoined, or exculpated under the Plan on or prior to the Effective Date shall vest in the Post-Effective Date Debtors and shall be subject to administration by the Plan Administrator, and the net proceeds thereof shall be Distributable Consideration.

**S. Plan Administrator.**

34. The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his responsibilities under this Plan and as otherwise provided in the Confirmation Order.

35. On the Effective Date, the authority, power, and incumbency of the persons acting as managers, directors, and officers of the Post-Effective Date Debtors shall be deemed to have resigned, solely in their capacities as such, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Post-Effective Date Debtors and shall succeed to the powers of the Post-Effective Date Debtors' managers, directors, and officers. The Plan Administrator shall act for the Post-Effective Date Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under the Plan in accordance with the Wind Down and as otherwise provided in the Confirmation Order.

36. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtors. The foregoing shall not limit the authority of the Post-Effective Date Debtors or the Plan Administrator, as applicable, to continue the employment of any former manager or officer. The Debtors, after the Confirmation Date, and the Post-Effective Date Debtors or Plan Administrator, after the Effective Date, shall be permitted to make payments to employees pursuant to employment programs then in effect, and, in the reasonable business judgment of the Plan Administrator and upon three (3) Business Days' notice to counsel to the AHG, to implement additional employee programs and make payments thereunder solely as necessary to effectuate the Wind Down, without any further notice to or action, order, or approval of the Bankruptcy Court.

37. The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Distribution Reserve Accounts and wind down the business and affairs of the Debtors and Post-Effective Date Debtors, including: (i) making distributions under the Plan; *provided* that, prior to making final distributions as contemplated herein and until all letters of credit issued under the First Lien Credit Agreement are replaced and cancelled, are drawn, or expire pursuant to their terms, the Plan Administrator or the Disbursing Agent, at the election of the Debtors or the Post-Effective Date Debtors, as applicable, shall reserve an amount of Distributable Consideration or New Common Stock, as applicable, on account of the Undrawn LC Facility Claims equal to the incremental distributions to which such Holders of First Lien Claims would be entitled if all undrawn letters of credit issued under the First Lien Credit Agreement were drawn and funded as

contemplated therein (the "Undrawn LC Facility Claims Reserve"); (ii) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Post-Effective Date Debtors in accordance with the Wind-Down Reserve; (iii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iv) making distributions from the Distribution Reserve Accounts as contemplated under the Plan; (v) establishing and maintaining bank accounts in the name of the Post-Effective Date Debtors; (vi) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (vii) paying all reasonable fees, expenses, debts, charges, and liabilities of the Post-Effective Date Debtors; (viii) except as otherwise provided for herein, enforcing and prosecuting claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in accordance with Article IV.E of the Plan; (ix) administering and paying taxes of the Post-Effective Date Debtors, including filing tax returns; (x) representing the interests of the Post-Effective Date Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; (xi) discharging the Sellers' and the Post-Effective Date Debtors' Post-Effective Date obligations under the Purchase Agreement; and (xii) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, the Confirmation Order, or any applicable orders of the Bankruptcy Court or as the Plan Administrator reasonably deems to be necessary and proper to carry out the provisions of the Plan in accordance with the Wind-Down Reserve.

38. To the extent that undrawn letters of credit issued under the First Lien Credit Agreement are drawn after the Distribution Record Date, such Undrawn LC Facility Claims, if any, shall be satisfied from the Undrawn LC Facility Claims Reserve. The Plan Administrator shall hold in the Undrawn LC Facility Claims Reserve all dividends, payments, and other distributions made on account of, as well as any obligations arising from, the property held in the Undrawn LC Facility Claims Reserve, to the extent that such property continues to be so held at the time such distributions are made or such obligations arise. For the avoidance of doubt, the foregoing shall not affect distributions to holders of First Lien Claims on account of drawn letters of credit as of the Distribution Record Date.

**T. Plan Implementation Authorization.**

39. The Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as the case may be, and their respective directors, officers, members, agents, and attorneys, financial advisors, and investment bankers are authorized and empowered from and after the date hereof to negotiate, execute, issue, deliver, implement, file, or record any contract, instrument, release, or other agreement or document related to the Plan, as the same may be modified, amended and supplemented, and to take any action necessary or appropriate to implement, effectuate, consummate, or further evidence the Plan in accordance with its terms and the terms hereof, or take any or all corporate actions authorized to be taken pursuant to the Plan or this Confirmation Order, whether or not specifically referred to in the Plan or any exhibit thereto, without further order of the Court. To the extent applicable, any or all such documents shall be accepted upon presentment by each of the respective state filing or recording offices and filed or recorded in

accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law. Pursuant to the business corporation laws of any state, as applicable, no action of the Debtors' boards of directors or the Post-Effective Date Debtors will be required to authorize the Debtors or the Post-Effective Date Debtors, as applicable, to enter into, execute and deliver, adopt or amend, as the case may be, any such contract, instrument, release, or other agreement or document related to the Plan, and following the Effective Date, each of the Plan documents will be a legal, valid, and binding obligation of the Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable, enforceable against the Debtors, the Post-Effective Date Debtors, and the Plan Administrator, in accordance with the respective terms thereof.

40. For the avoidance of doubt, the Debtors or Post-Effective Date Debtors, as applicable, are authorized and empowered to take all actions necessary related to any corporate name changes in order to effectuate and implement the Plan and the Asset Sale. The Clerk of the United States Bankruptcy Court for the District of New Jersey is authorized and directed to make any necessary docket entries or other filings with the Court related to any corporate name change of the Debtors or Post-Effective Date Debtors, including, but not limited to, docket entries changing the caption of these Chapter 11 Cases.

**U. Cancellation of Existing Agreements and Interests.**

41. On the Effective Date, except to the extent otherwise provided in the Plan, including in Article V.A. of the Plan, all notes, instruments, certificates, and other documents evidencing Claims or Interests, including the First Lien Credit Documents and all other credit

agreements and indentures, shall be cancelled, and the obligations of the Debtors and any non-Debtor Affiliate thereunder or in any way related thereto, including any Liens and/or claims in connection therewith, shall be deemed satisfied in full, cancelled, discharged, released, and of no force or effect, and the Agents shall be released from all duties and obligations thereunder. Holders of or parties to such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan. Notwithstanding the foregoing or anything to the contrary herein, any rights of each Agent to indemnification and participation by the other lenders in letters of credit under the DIP Documents, the Receivables Program Documents, the First Lien Credit Documents, and the Bridge Facility Documents shall remain binding and enforceable in accordance with the terms of such documents; *provided* that any such rights to indemnification shall remain binding and enforceable only as against the Post-Effective Date Debtors and shall not be subject to discharge, impairment, or release under the Plan or the Confirmation Order or be asserted against the Purchaser, a Designee, or any of their respective affiliates, or their respective property or assets, including any Acquired Entity (as defined in the Purchase Agreement).

**V. Wind Down and Dissolution.**

42. As soon as practicable after the Effective Date, the Plan Administrator shall: (i) cause the Debtors and the Post-Effective Date Debtors, as applicable, to comply with and abide by the terms of the Purchase Agreement and any other documents contemplated thereby; (ii) to the extent applicable, file a certificate of dissolution or equivalent document, together with

all other necessary corporate and company documents, to effect the dissolution of one or more of the Debtors or the Post-Effective Date Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (iii) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Plan Administrator without the need for any action or approval by the shareholders or board of directors or managers of any Debtor. From and after the Effective Date, except with respect to Post-Effective Date Debtors as set forth herein, the Debtors (x) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (y) shall be deemed to have canceled pursuant to the Plan all Existing Equity Interests, and (z) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims. The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

**W. Approval of Consents and Authorization to Take Acts Necessary to Implement Plan.**

43. This Confirmation Order shall constitute all authority, approvals, and consents required, if any, by the laws, rules, and regulations of all states and any other governmental

authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement, and any documents, instruments, securities, or agreements, and any amendments or modifications thereto.

**X. The Releases, Injunction, Exculpation, and Related Provisions Under the Plan.**

44. Unless otherwise provided in the Plan or in this Confirmation Order, no Person or Entity may commence or pursue a Claim or Cause of Action of any kind against the Debtors, the Post-Effective Date Debtors, the Exculpated Parties, or the Released Parties, as applicable, that is subject to, or is reasonably likely to be subject to, Article VIII.C, Article VIII.D, or Article VIII.E of the Plan, without the Bankruptcy Court first determining that such Claim or Cause of Action was not subject to Article VIII.C, Article VIII.D, or Article VIII.E of the Plan and specifically authorizing such Person or Entity to bring such Claim or Cause of Action against any such Debtor, Post-Effective Date Debtor, Exculpated Party, or Released Party. For the avoidance of doubt, the Gatekeeper Provision shall not be construed to prohibit the Plan Administrator from (i) enforcing the rights of the Post-Effective Date Debtors pursuant to the Plan or any Plan Supplement document; (ii) objecting to Claims pursuant to Article VII of the Plan; or (iii) pursuing any Cause of Action retained by the Post-Effective Date Debtors pursuant to the Plan and the Confirmation Order; *provided* that, in each case, the Plan Administrator satisfies the requirements of Art. VIII.F of the Plan.

**Y. Treatment of Executory Contracts and Unexpired Leases.**

45. The provisions governing the treatment of Executory Contracts and Unexpired Leases set forth in Article V of the Plan (including the procedures regarding the resolution of any and all disputes concerning the assumption or rejection, as applicable, of such Executory Contracts and Unexpired Leases) as well as any notices related to the procedures shall be and hereby are approved in their entirety, except as modified herein.

46. On the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, each Executory Contract or Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be (i) assumed, assumed and assigned, or assigned to the Purchaser or a Designee in accordance with the Purchase Agreement, as applicable, if it is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases; (ii) assumed, assumed and assigned, or assigned to the Purchaser or a Designee in accordance with the Purchase Agreement if it is not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and does not relate exclusively to Excluded Assets or Excluded Liabilities; or (iii) rejected if it is (a) listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or (b) not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and relates exclusively to Excluded Assets or Excluded Liabilities. For the avoidance of doubt, the foregoing shall not affect any Executory Contract or Unexpired Lease that is (i) explicitly designated by the Plan or the Confirmation Order to be assumed or assumed and assigned, as applicable, in connection with the Confirmation of the

Plan; (ii) subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (iii) a D&O Liability Insurance Policy; or (iv) a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan. The assumption of Executory Contracts and Unexpired Leases thereunder may include the assignment of certain of such contracts to affiliates.

47. Entry of this Confirmation Order by the Court shall constitute approval of all assumptions, assumptions and assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided for in the Plan, the Plan Supplement, the Purchase Agreement, and this Confirmation Order, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each Executory Contract and Unexpired Lease assumed and assigned to the Purchaser or a Designee in accordance with the Purchase Agreement shall vest in and be fully enforceable by the Purchaser or the applicable Designee in accordance with its terms, except as may be modified by the Plan or any order of the Court authorizing and providing for its assumption and assignment. Pursuant to sections 1123(b)(2) and 365 of the Bankruptcy Code and subject to and conditioned upon the closing of the Sale Transaction, the Debtors are hereby authorized to assume and assign the Assumed Contracts, as applicable, to the Purchaser or its Designees free and clear of all Liens and Claims to the extent set forth in this Confirmation Order, and the requirements of section 365(b)(1) of the Bankruptcy Code shall be deemed satisfied as of such assumption or assumption and assignment and payment in full in Cash or other satisfaction of applicable Cures.

48. The Debtors are hereby authorized to execute and deliver to the Purchaser and any Designee in accordance with the Purchase Agreement, or counterparty to Assumed Contracts, such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Purchaser or its Designees as provided in the Purchase Agreement. With respect to each of the Assumed Contracts that is being assumed and assigned in accordance with the Purchase Agreement and subject to paragraph 57 of section II hereof, the Debtors have cured or will cure any monetary default required to be cured with respect to such Assumed Contracts under sections 1123(b)(2) and 365(b)(1) of the Bankruptcy Code, and the Purchaser and Designees, as applicable, have provided adequate assurance of future performance under the applicable Assumed Contracts in satisfaction of sections 1123(b)(2), 365(b), and 365(f) of the Bankruptcy Code to the extent that any such assurance is required and not waived or otherwise resolved with the Purchaser and any applicable Designee by the applicable counterparty to such Assumed Contracts. Upon the Closing Date or the applicable date of assumption and assignment with respect to an Assumed Contract, the Purchaser and any applicable Designee shall be fully and irrevocably vested with all rights, title, and interest of the Debtors under such Assumed Contract pursuant to sections 1123(b)(2) and 365 of the Bankruptcy Code. The assumption by the Debtors and assignment to the Purchaser or its Designees of any Assumed Contract shall not be a default under such Assumed Contract. To the extent any Assumed Contract that is being assumed and assigned in accordance with the Purchase Agreement provides that any Person's or Entity's consent is required as a condition to the assignment of such Assumed Contract, such

consent requirement shall be deemed satisfied by virtue of the findings and conclusions in this Confirmation Order and shall be of no further force or effect.

49. The failure of the Debtors, the Purchaser, or a Designee to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions or of the Debtors', a Designee's, or the Purchasers' rights to enforce every term and condition of the Assumed Contracts, as applicable.

50. Except as otherwise provided in the Plan or agreed to by the Debtors, the Purchaser or the applicable Designee, and the applicable Counterparty, each assumed (or assumed and assigned) Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto (including those entered into through the Closing Date), and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

51. To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease

(including any "change of control" provision or any minimum net worth or similar financial provision), then such provision (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Notwithstanding anything to the contrary in the Plan, the Debtors, the Post-Effective Date Debtors, and/or the Plan Administrator, as applicable, and with the consent of the Purchaser and, solely to the extent expressly provided for in the Designation Agreement, the applicable Designee, reserve the right to alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases and the Schedule of Rejected Executory Contracts and Unexpired Leases at any time through and including ten (10) days before the Effective Date; *provided* that, following the Effective Date the Plan Administrator, the Purchaser, and, solely to the extent expressly provided for in the Designation Agreement, the applicable Designee, may supplement the Schedule of Assumed Executory Contracts and Unexpired Leases at any time in accordance with the Purchase Agreement, including the notice and consent rights set forth in the Purchase Agreement.

52. The Debtors or the Post-Effective Date Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as reasonably practicable thereafter. The proposed amount and timing of payment of each such Cure shall be set forth in the Plan Supplement unless otherwise agreed in writing (email being sufficient) between the Debtors or the Post-Effective Date Debtors and the counterparty to the applicable Executory Contract or Unexpired Lease.

Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any Executory Contract Objection filed by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or assumption and assignment, including pursuant to the Plan, or related Cure amount must be Filed, served, and actually received by counsel to the Debtors and the U.S. Trustee by the applicable Assumption or Rejection Objection Deadline or any other deadline that may be set by the Court. Any Executory Contract Objection (x) timely Filed prior to the Confirmation Hearing will be heard by the Court at the Confirmation Hearing unless otherwise agreed to by the Debtors and the objecting party, with the consent of the Purchaser or, solely to the extent expressly provided for in the Designation Agreement, the applicable Designee, or (y) timely Filed after the Confirmation Hearing shall be heard as soon as reasonably practicable on a date requested by the Debtors or the Post-Effective Date Debtors, as the case may be, with the consent of the Purchaser or, solely to the extent expressly provided for in the Designation Agreement, the applicable Designee. Any Executory Contract Objection that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion and shall not be enforceable against the Purchaser, a Designee, or any Post-Effective Date Debtor without the need for any objection by the Post-Effective Date Debtors or any other party in interest or any further notice to or action, order, or approval of the Court. Any Cure shall be deemed fully satisfied, released, and discharged upon indefeasible payment by the Debtors or the Post-Effective Date Debtors, as applicable, of the Cure amount in full in Cash, unless otherwise agreed to by the applicable counterparty, the Debtors or the Post-Effective Date Debtors, and the Purchaser; *provided* that nothing herein shall prevent the Post-Effective Date Debtors from

paying any Cure amount despite the failure of the relevant counterparty to File an Executory Contract Objection. The Debtors or the Post-Effective Date Debtors, as applicable, may also settle any Cure without any further notice to or action, order, or approval of the Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or assumption and assignment of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption and/or assignment.

53. If there is any dispute regarding any Cure, the ability of the Post-Effective Date Debtors, or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption (or assumption and assignment), then payment of Cure shall occur as soon as reasonably practicable after entry of a Final Order (which may be this Confirmation Order) resolving such dispute, approving such assumption (and, if applicable, assumption and assignment), or as may be agreed upon by the Debtors or the Post-Effective Date Debtors, the Purchaser, a Designee, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

54. To the extent an Executory Contract Objection relates solely to a Cure, the Debtors or the Post-Effective Date Debtors, as applicable, may assume and/or assume and assign the applicable Executory Contract or Unexpired Lease prior to the resolution of the Cure objection; *provided* that the Debtors or the Post-Effective Date Debtors, as applicable, reserve Cash in an amount sufficient to pay the full amount reasonably asserted as the required Cure payment by the non-Debtor party to such Executory Contract or Unexpired Lease (or such smaller amount as may be fixed or estimated by the Court or otherwise agreed to by such non-

Debtor party and the applicable Post-Effective Date Debtor); *provided* further that any Cash reserved in accordance with the forgoing shall not constitute an Acquired Asset and shall be maintained by the Debtors or the Post-Effective Date Debtors, as applicable.

55. The Debtors served all counterparties to the Assumed Contracts with notice of the proposed assumption or assumption and assignment, and the deadline to object to the Cures and adequate assurance of future performance with respect to the Purchaser or a Designee has passed unless otherwise provided herein or in the Plan. Accordingly, subject to paragraph 57 of section II hereof, unless an objection to the proposed Cures or adequate assurance information with respect to the Purchaser or any Designee was filed and served, or informally lodged, before the applicable Assumption or Rejection Objection Deadline, each counterparty to an Assumed Contract, as applicable, is forever barred, estopped, and permanently enjoined from asserting against the Debtors, the Purchaser, any Designee, their affiliates, successors or assigns or the property of any of the foregoing, any default existing as of the date of the Confirmation Hearing if such default was not raised or asserted prior to or at the Confirmation Hearing.

56. All of the requirements of sections 1123(b)(2), 365(b), and 365(f), including without limitation, the demonstration of adequate assurance of future performance and Cures required under the Bankruptcy Code, have been satisfied for the assumption by the Debtors and assignment to the Purchaser or its Designees of all Assumed Contracts, as applicable, unless otherwise provided herein and in the Plan. The Purchaser and the Designees have satisfied their adequate assurance of future performance requirements with respect to the applicable Assumed Contracts and demonstrated or will have demonstrated before the Closing Date that they are

sufficiently capitalized to comply with the necessary obligations under the applicable Assumed Contracts or otherwise have entered into agreements with counterparties to the Assumed Contracts regarding their obligations to provide adequate assurance of future performance.

57. (i) To the extent a Counterparty to an Assumed Contract failed to timely object to a Cure, such Cure has been and shall be deemed to be finally determined as of the Debtors' filing of the Plan Supplement, except as otherwise may be amended in accordance with the Plan, this Confirmation Order, and the Purchase Agreement, and any such Counterparty shall be barred, and forever prohibited from challenging, objecting (formally or informally) to, or denying the validity and finality of the Cures due and owing as of the date of filing of the Plan Supplement; (ii) any monetary or nonmonetary obligations that come due on an Assumed Contract between the filing of the Plan Supplement and the later of the effective date of assumption or assumption and assignment of an Assumed Contract shall be paid in full in Cash or otherwise satisfied by the Debtors as and when they come due; (iii) to the extent expressly set forth in the Purchase Agreement or otherwise expressly agreed to between a counterparty to an Assumed Contract and the Purchaser, the Purchaser shall be responsible for and shall pay or satisfy any monetary obligations that accrue under any Executory Contract or Unexpired Lease assumed and assigned to the Purchaser pursuant to the Plan from the date of the Debtors' filing of the Plan Supplement through the effective date of assumption and assignment, to the extent such amounts come due after the effective date of assumption and assignment; and (iv) subject only to clause (i) of this paragraph 57, no provision shall be construed as releasing any Claim that has been or may be asserted under any Executory Contract or Unexpired Lease upon assumption, including (A) a

Cure Claim or (B) an Administrative Claim unless and until all monetary and nonmonetary obligations, subject to section 365 of the Bankruptcy Code, as of the effective date of assumption have been satisfied to the extent required under the Bankruptcy Code; *provided*, *however*, with respect to the foregoing, and to the extent payable by the Debtors, any such Claim shall be filed by the later of (A) the Administrative Claims Bar Date, (B) thirty (30) days after the effective date of assumption, or (C) such other date as may be otherwise agreed in writing (email being sufficient), with the consent of the Purchaser and the Required Consenting Term Lenders (not to be unreasonably withheld), between the Debtors or the Post-Effective Date Debtors and the Counterparty to the applicable Executory Contract; *provided further* that (x) in the absence of filing any such Claim by such deadlines, any such Claim shall be barred and extinguished and (y) the existence of a pending dispute as to an amount described in clause (ii) of this paragraph 57 shall not preclude or limit the effectiveness of any assumption or assumption and assignment of the underlying Assumed Contract, and the Debtors or the Post-Effective Date Debtors, as applicable, shall pay any amounts on account of such amounts as agreed between the Debtors or the Post-Effective Date Debtors and the applicable Counterparty or as ordered by the Court.

58. Assumption (or assumption and assignment or assignment) of any Executory Contract or Unexpired Lease pursuant to the Plan, the Purchase Agreement, or otherwise and indefeasible payment of any applicable Cure in full in Cash pursuant to Article V.D of the Plan (unless otherwise agreed to by the applicable counterparty, the Debtors, or the Post-Effective Date Debtors, and the Purchaser) shall result in the full release and satisfaction of any Cures,

Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed (or assumed and assigned or assigned) in the Chapter 11 Cases, including pursuant to this Confirmation Order, and for which any Cure has been fully paid pursuant to Article V.D of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Court.

59. For the avoidance of doubt, the Purchaser or a Designee shall not have any obligation with respect to any Cure. To the extent any Cure dispute arises after the Effective Date with respect to an Executory Contract or Unexpired Lease assumed and assigned to the Purchaser or to a Designee, the resolution of such Cure dispute shall be the sole responsibility of the Debtors or the Post-Effective Date Debtors, and the Purchaser or a Designee shall have no liability in connection therewith.

60. Entry of this Confirmation Order shall constitute a Court order approving the rejection, if any, of any Executory Contracts or Unexpired Leases as provided for in the Plan, the Schedule of Rejected Executory Contracts and Unexpired Leases, or the Purchase Agreement. Unless otherwise provided by a Final Order of the Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or this Confirmation Order, if any, must be Filed with the Claims and Noticing Agent at the

address specified in any notice of entry of this Confirmation Order and served on the Post-Effective Date Debtors no later than thirty (30) days after the effective date of such rejection. The notice of the Plan Supplement shall be deemed appropriate notice of rejection when served on applicable parties.

61. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease with respect to which a Proof of Claims is not Filed with the Claims and Noticing Agent within thirty (30) days after the effective date of such rejection will be automatically disallowed and forever barred from assertion and shall not be enforceable against the Debtors, the Post-Effective Date Debtors, the Estates, the GUC Trust, the Purchaser or a Designee, the Plan Administrator, or their property without the need for any objection by the Debtors, the Post-Effective Date Debtors, the Plan Administrator, the Purchaser or a Designee, or the GUC Trust, as applicable, or further notice to, action, order, or approval of the Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged and shall be subject to the permanent injunction set forth in Article VIII.F of the Plan, notwithstanding anything in a Proof of Claim to the contrary.

62. All Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be treated as a General Unsecured Claim as set forth in Article III.B of the Plan and may be objected to in accordance with the provisions of Article VII of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

**Z. Abandonment.**

63. Any equipment, fixtures, furniture, or other personal property (collectively, the "Personal Property") of third parties that are not removed from any real property owned or leased by the Post-Effective Date Debtors within forty-five (45) days after the Confirmation Date will be deemed abandoned and surrendered to the Post-Effective Date Debtors. Following the abandonment and surrender of any such property, the Post-Effective Date Debtors are authorized to dispose of the abandoned Personal Property without notice or liability to any party.

**AA. Provisions Governing Distributions.**

64. The distribution provisions of Article VI of the Plan are hereby approved in their entirety. Except as otherwise set forth in the Plan or this Confirmation Order, the Disbursing Agent or the GUC Trustee, as applicable, shall make all distributions required under the Plan. The timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan or this Confirmation Order, as applicable.

**BB. Post-Confirmation Notices and Bar Dates.**

65. In accordance with Bankruptcy Rules 2002 and 3020(c), no later than ten (10) Business Days after the Effective Date, the Post-Effective Date Debtors or the Plan Administrator, as applicable, must cause notice of Confirmation and the occurrence of the Effective Date (the "Notice of Confirmation") to be filed on the docket and be served by United States mail, first-class postage prepaid, by hand, by overnight courier service, or by electronic service to all parties served with the Confirmation Hearing Notice; *provided* that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors

mailed a Confirmation Hearing Notice but received such notice returned marked as "undeliverable as addressed," "moved, left no forwarding address," "forwarding order expired," or similar language, unless such Entity has informed the Debtors in writing of or the Debtors are otherwise aware of such Entity's new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements. The Confirmation Hearing Notice, this Confirmation Order, and the Notice of Confirmation are adequate under the particular circumstances of these Chapter 11 Cases, in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no other or further notice is necessary.

66. The Notice of Confirmation will have the effect of an order of the Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

67. Except as otherwise provided in Article II.A of the Plan, requests for payment of Administrative Claims must be Filed with the Court and served on the Debtors by the applicable Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date without the need for any objection from the Debtors or the Post-Effective Date Debtors, as applicable, or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**CC. Notice of Subsequent Pleadings.**

68. Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in the Chapter 11 Cases after the Effective Date will be limited to the following parties: (i) the Post-Effective Date Debtors and their counsel; (ii) the U.S. Trustee; (iii) the Plan Administrator, (iv) the Purchaser and its counsel; (v) counsel to the AHG; (vi) any party known to be directly affected by the relief sought by such pleadings; and (vii) any party that specifically requests additional notice in writing to the Debtors or Post-Effective Date Debtors, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date. The Claims and Noticing Agent shall not be required to file updated service lists.

**DD. Section 1146 Exemption.**

69. To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Post-Effective Date Debtor, as applicable, or to or from any other Person) of property under the Plan or pursuant to: (i) the issuance, Reinstatement, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Post-Effective Date Debtors, as applicable; (ii) the Restructuring Transactions; (iii) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iv) the making, assignment, or recording of any lease or sublease; (v) the Sale Transaction and any agreement, acquisition, or transaction entered into by the Purchaser, a Designee, or any of their respective affiliates in connection with the Sale Transaction or in furtherance thereof, including any acquisitions of real or personal property by the Purchaser, a

Designee, or their respective affiliates from one or more of the Debtors' creditors or landlords in connection with consummation of the Sale Transaction or from other parties in connection with the closing of the Sale Transaction and/or integral to the financing thereof; or (vi) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax, fee, or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax, fee, or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146 of the Bankruptcy Code and this Confirmation Order, shall forego the collection of any such tax, fee, or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, fee, or governmental assessment.

**EE. Preservation of Causes of Action.**

70. In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VIII of the Plan, the Purchase Agreement and any related documents and schedules, the Post-Effective Date Debtors, shall retain and may enforce (or the Plan Administrator may enforce, if applicable) all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the rights of the Post-Effective Date Debtors to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action (i) acquired by the Purchaser or a Designee in accordance with the Purchase Agreement, as applicable, or (ii) released or exculpated herein (including, without limitation, by the Debtors) pursuant to the releases and exculpations contained in the Plan, including in Article VIII thereof, which shall be deemed released and waived by the Debtors and the Post Effective Date Debtors, as applicable, as of the Effective Date.

71. The Post-Effective Date Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Post-Effective Date Debtors. Article IV.E of the Plan further provides that: "No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Post-Effective Date Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors and the Post-Effective Date Debtors, as applicable, expressly reserve all rights to prosecute any and all

Causes of Action against any Entity, except as may be assigned or transferred to the Purchaser or a Designee in accordance with the Purchase Agreement or as otherwise expressly provided in the Plan, including Article VIII of the Plan." Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Post-Effective Date Debtors expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

72. The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. For the avoidance of doubt, the GUC Trust shall be solely responsible for effectuating all distributions on account of General Unsecured Claims, and the Plan Administrator, if applicable, shall have no responsibility therefor. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the corresponding Post-Effective Date Debtor except as otherwise expressly provided in the Plan, including Article VIII of the Plan. The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, shall have the exclusive right, authority, and

discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to Article IV.E of the Plan include any Claim or Cause of Action against a Released Party or Exculpated Party, or any Avoidance Action cancelled and/or extinguished under the Purchase Agreement.

**FF. Effectiveness of All Actions.**

73. Except as set forth in the Plan, all actions authorized to be taken pursuant to the Plan shall be effective on, before, or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of the Court, or further action by the Debtors, the Post-Effective Date Debtors, and/or the Plan Administrator and their respective directors, officers, members, or stockholders, and with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or stockholders.

**GG. Binding Effect.**

74. Upon the occurrence of the Effective Date, the terms of the Plan are immediately effective and enforceable and deemed binding on the Debtors, the Post-Effective Date Debtors, and any and all Holders of Claims or Interests (irrespective of whether such Holders of Claims and Interests have, or are deemed to have, accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to

Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to this Plan regardless of whether any Holder of a Claim or Interest has voted on this Plan.

**HH. Directors, Officers, and Managers.**

75. As of the Effective Date, the existing board of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be deemed to have resigned without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor.

76. The Debtors shall pay all fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date, and on and after the Effective Date, the Post-Effective Date Debtors shall pay any and all such fees when due and payable until the earliest of the applicable Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**II. Claims Reconciliation Process.**

77. The procedures and responsibilities for, and costs of, reconciling Disputed Claims shall be as set forth in the Plan or as otherwise ordered by the Court.

**JJ. Professional Compensation.**

78. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors. Upon the Confirmation Date, any requirement that Professionals comply with sections 327–331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Post-Effective Date Debtors, and/or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

**KK. Restructuring Expenses.**

79. The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date, shall be paid in full in Cash on the Effective Date or as reasonably practicable thereafter (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein and in the Plan and RSA, without any requirement to File a fee application with the Court.

**LL. Nonseverability of Plan Provisions upon Confirmation.**

80. Each term and provision of the Plan, as it may have been amended by the Confirmation Order, is (i) valid and enforceable pursuant to its terms, (ii) integral to the Plan, and (iii) nonseverable and mutually dependent.

**MM. Waiver or Estoppel.**

81. Except as otherwise set forth in the Plan or this Confirmation Order, each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Court before the Confirmation Date.

**NN. Authorization to Consummate.**

82. The Debtors are authorized to consummate the Plan, including the Asset Sale contemplated thereby, at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to Consummation set forth in Article IX of the Plan. The substantial consummation of the Plan, within the meaning of sections 1101(2) and 1127 of the Bankruptcy Code, is deemed to occur on the Effective Date.

**OO. Injunctions and Automatic Stay.**

83. Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order (including the Injunction) shall remain in full force and effect in accordance with their terms.

**PP. Dissolution of Statutory Committees.**

84. On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases.

**QQ. Effect of Non-Occurrence of Conditions to the Effective Date.**

85. If the Effective Date does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest, the Purchaser, a Designee, or any other Entity; or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, the Purchaser, a Designee, or any other Entity in any respect; *provided* that all provisions of the RSA and the Purchase Agreement that survive termination thereof shall remain in effect in accordance with the respective terms thereof.

**RR. Section 345 Waiver.**

86. Section 345 of the Bankruptcy Code and any provision of the U.S. Trustee Guidelines requiring that the bank accounts listed in the Cash Management Motion[7] be U.S. Trustee authorized depositories is waived with respect to the bank accounts existing as of the Petition Date.

[7] "Cash Management Motion" means the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honoring Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Form, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief* [Docket No. 11].

**SS. Texas Taxing Authorities.**

87. Notwithstanding anything else to the contrary in the Plan or this Confirmation Order, the following provisions will govern the treatment of the claims of the Texas Comptroller and the Texas Workforce Commission (the "Texas Taxing Authorities"): (i) nothing provided in the Plan or this Confirmation Order shall affect or impair any statutory or common law setoff rights of the Texas Taxing Authorities in accordance with 11 U.S.C. § 553; (ii) nothing provided in the Plan or this Confirmation Order shall affect or impair any rights of the Texas Taxing Authorities to pursue any non-Debtor third parties (other than the Purchaser or a Designee under the Purchase Agreement) for tax debts or claims; (iii) nothing provided in the Plan or this Confirmation Order shall be construed to preclude the payment of interest on the Texas Taxing Authorities' administrative expense tax claims; and (iv) the Texas Taxing Authorities' administrative expense claims are allowed upon filing without application or motion for payment, subject to objection on substantive grounds. In no event shall the Texas Taxing Authorities be paid in a payment schedule that extends past sixty (60) months of the Petition Date, unless otherwise permitted by applicable law.

**TT. Additional Taxing Authorities.**

88. Notwithstanding anything to the contrary in this Confirmation Order or the Plan, the Debtors shall pay all outstanding *ad valorem* taxes owed to (i) Maricopa County and (ii) the entities represented by the Linebarger Goggan Blair & Sampson law firm, namely, Galveston County and Tarrant County in these Chapter 11 Cases (the "Additional Taxing Authorities") for tax years 2022 and prior on or before the Effective Date. The Debtors shall pay the 2023

*ad valorem* taxes owed to the Additional Taxing Authorities in the ordinary course of business. The Additional Taxing Authorities' allowed claims for the 2023 and prior tax years shall include all interest properly charged under applicable non-bankruptcy law through the date of payment to the extent that applicable law provides for interest with respect to any portion of such claims. The 2023 and prior tax year *ad valorem* tax liens (the "Tax Liens"), if any, shall remain attached to all applicable property, or proceeds from the sale thereof, in their prepetition priority until the taxes due under this Confirmation Order are fully paid. In the event the Asset Sale closes in 2024, the Additional Taxing Authorities' 2024 tax liens shall remain attached to all applicable property until such time as the 2024 taxes are paid in full. Any actions retained against the Additional Taxing Authorities pursuant to the Plan or any Plan Supplements shall be limited to those permitted by applicable law. All parties' rights and defenses under applicable law and the Bankruptcy Code with respect to the foregoing, including, but not limited to, the right to dispute or object to (i) the claims or purported classification of the Additional Taxing Authorities, (ii) the allowance or classification of any interest charged on account of such tax claims under applicable law and the Bankruptcy Code, and (iii) the validity or enforcement of the Tax Liens under applicable non-bankruptcy law or the Bankruptcy Code, are fully preserved. The Additional Taxing Authorities are permitted without leave of the Court to amend their estimated 2023 claim amounts to actual assessed amounts.

**UU. Effect of Conflict.**

89. This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any

inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control.

**VV. Retention of Jurisdiction.**

90. This Court retains jurisdiction over the Chapter 11 Cases, all matters arising out of or related to the Chapter 11 Cases and the Plan, the matters set forth in Article XI and other applicable provisions of the Plan.

**WW. Waiver of 14-Day Stay.**

91. Notwithstanding Bankruptcy Rule 3020(e), and to the extent applicable, Bankruptcy Rules 6004(h), 7062, and 9014, this Confirmation Order is effective immediately and not subject to any stay.

**XX. Final Order.**

92. This Confirmation Order is a Final Order, and the period in which an appeal must be Filed shall commence upon the entry hereof.

93. This Confirmation Order is effective as of November 17, 2023.

**YY. Provisions Regarding DLR.**

94. On November 3, 2023, the Debtors filed the *Notice of Assumption of Certain Executory Contracts and/or Unexpired Leases* [Docket No. 652] (the "Assumption Notice") seeking to assume, as amended, each of the leases and executory contracts, including any exhibits, amendments, modifications, supplements, and guarantees attached or related thereto, set forth in the Assumption Notice (the "DLR Agreements"). Solely to the extent the Court has not entered an order approving the assumption of the DLR Agreements in accordance with the

Assumption Notice, the assumption of the DLR Agreements in accordance with the Assumption Notice is approved herein and the DLR Agreements are assumed pursuant to section 365 of the Bankruptcy Code effective as of the assumption date listed on Exhibit 1 of the Assumption Notice. The DLR Agreements shall be assigned pursuant to the terms of the Purchase Agreement and the Plan.

95. Following assumption, any and all amounts that are accrued as of assumption and become due and owing post-assumption and prior to the Effective Date pursuant to the terms of the DLR Agreements shall be accorded administrative expense priority and paid in a timely manner pursuant to the terms of the DLR Agreements.

96. Notwithstanding anything herein or in the Plan to the contrary, the payment of any Cure and the assumption and assignment of the DLR Agreements is without prejudice to any rights, including but not limited to setoff, recoupment, or remedies, whether at law or in equity, that the parties to the DLR Agreements may have following assumption of the DLR Agreements, which rights are preserved in their entirety. For the avoidance of doubt, any rights or claims of the non-Debtor counterparty to the DLR Agreements, including but not limited to claims related to indemnification or year-end adjustments or reconciliations, are preserved in their entirety.

**ZZ. Provisions Regarding Liberty Mutual Insurance Company.**

97. Notwithstanding any other provisions of the Plan, this Confirmation Order, or any other order of this Court, on the Effective Date, all rights and obligations related to the indemnity agreements, if any, setting forth the rights of Liberty Mutual Insurance Company (the "Surety") against the Debtors, and the Debtors' obligations, if any, to pay, indemnify, and hold the Surety

harmless from any loss, cost, or expense that the Surety may incur, in each case, on account of the issuance of any Surety Bonds on behalf of the Debtors; (the "Surety Bond Program" and the Debtors' obligations arising therefrom, the "Surety Bond Obligations") shall be reaffirmed and ratified by the applicable Post-Effective Date Debtors and continue in full force and effect and are not discharged, enjoined, impaired, or released by the Plan in any way. For the avoidance of doubt, nothing in the Plan or this Confirmation Order, including without limitation, any exculpation, release, injunction, or discharge provision of the Plan, including without limitation, any of those provisions contained in Article VIII of the Plan, shall bar, alter, limit, impair, release, modify, or enjoin the Surety Bond Obligations. The Sureties are otherwise not Releasing Parties under the Plan in any way and shall be deemed to have opted out of the releases provided by the Plan. The Surety Bond Program and all Surety Bond Obligations related thereto shall be treated by the Post-Effective Date Debtors and the Surety in the ordinary course of business as if the Chapter 11 Cases had not been commenced. Nothing in the Plan or this paragraph shall affect in any way the Surety's rights against any non-Debtor, or any non-Debtor's rights against the Surety, including under the Surety Bond Program or with regard to the Surety Bond Obligations.

**AAA. Provisions Regarding Seacoast National Bank.**

98. The Debtors shall pay all Cure amounts owed in connection with the Seacoast MELA in accordance with section 365 of the Bankruptcy Code, and until Closing, the Debtors shall pay all amounts arising under the Seacoast MELA in the ordinary course of business to Seacoast through its designated servicer, Wingspire Equipment Finance, or such other designee

that Seacoast will provide in writing to the Debtors. Furthermore, in accordance with and pursuant to the Purchase Agreement and the Plan, the Debtors shall assume, and will assign to the Purchaser, the Seacoast MELA and upon assignment thereof, effective as of the Closing, (i) in accordance with and pursuant to the terms of the Purchase Agreement, the Purchaser shall assume all of the Debtors' obligations arising under the Seacoast MELA from and after the date of the Closing, and (ii) the Purchaser will remit all payment obligations directly to Seacoast (and Seacoast shall provide the Purchaser with payment instructions contemporaneous with the Closing). At or following the Closing, the Purchaser (or the Debtors, as applicable) may assign the Seacoast MELA to a subsidiary or affiliate of Purchaser, *provided* that Purchaser either provides Seacoast with a written guarantee of all obligations under the Seacoast MELA or assumes in writing all liabilities under the Seacoast MELA. The Purchaser may not assign the Seacoast MELA to any other third parties without written consent from Seacoast.

**BBB. Provisions Regarding PSB Northern California Industrial Portfolio, LLC.**

99. Notwithstanding anything to the contrary in this Confirmation Order, the provisions of this paragraph shall apply to the Debtors' lease with PSB Northern California Industrial Portfolio, LLC ("PSB," and such lease, the "PSB Lease"). The PSB Lease is designated for assumption and assignment to the Purchaser or its affiliate and cannot be designated as rejected unless consented to by PSB. The Debtors shall pay to PSB the amount of $95,267 plus any additional unpaid amounts that accrue through the Closing. Until Closing, the Debtors shall pay all amounts arising under the PSB Lease in the ordinary course of business. Effective as of the Closing, the Purchaser or its affiliate shall assume the Debtor's obligations

with respect to the PSB Lease (including any unpaid and accrued obligations with respect to any year-end adjustments and/or year-end reconciliations in accordance with the terms of the PSB Lease) arising under and which come due under the PSB Lease from and after the date of the Closing. Effective as of the Closing, an affiliate of the Purchaser shall be substituted for the Debtor for all purposes as a party to the PSB Lease and shall execute an assignment and assumption agreement to effectuate the assignment. The security deposit in the amount of $100,000 held by PSB shall be retained by PSB as the deposit required under the PSB Lease after closing, and no further or additional deposit shall be required from Purchaser or its affiliate. Other than as authorized by the Bankruptcy Court and the Bankruptcy Code concerning the anti-assignment provisions, including sections 365 and 1123(b)(2) thereof, all of PSB's rights under the PSB Lease, including any setoff rights, are preserved, and nothing in this Confirmation Order shall impair or modify PSB's rights under the PSB Lease. PSB shall also be deemed to have opted out of the Third-Party Release.

**CCC. Provisions Regarding HITT Contracting, Inc.**

100. All contracts and leases entered into after the Petition Date by any Debtor on the one hand, and HITT Contracting, Inc. on the other hand, will be enforceable pursuant to their terms. Existing obligations under such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

101. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, nothing in the Plan or this Confirmation Order shall alter or modify any contracts entered into

after the Petition Date by any Debtor, on the one hand, and HITT Contracting, Inc. on the other hand.

**DDD. Provisions Regarding Mapletree US Management, LLC.**

102. Notwithstanding anything to the contrary in this Confirmation Order, the Plan, or Plan Supplement, between the Confirmation Date and the effective date of assumption and assignment of such leases, all rights are expressly reserved solely related to Cure objections on behalf of Mapletree US Management, LLC, and its subsidiaries, Garrison DC Holdings Pte. Ltd., Cypress DC Assets LLC, Medina DC 1 Assets, LLC, and Medina DC 2 Assets, LLC, with respect to the Cure amounts (including recovery of attorneys' fees and costs, if applicable), listed on account of the unexpired real property leases that Garrison DC Holdings Pte. Ltd., Cypress DC Assets LLC, Medina DC 1 Assets, LLC, and Medina DC 2 Assets, LLC are parties to (6800 Millcreek Drive, Mississauga; 1400 Kifer Road, Sunnyvale; 375 Riverside Parkway (Ste 125 & 135), Lithia Springs; 375 Riverside Parkway (Ste 145 & 150), Lithia Springs; 21110 Ridgetop Circle, Sterling; 45845 Nokes Boulevard, Sterling; 45901 Nokes Boulevard, Sterling; 115 Second Avenue, Waltham; 8534 Concord Center Drive, Englewood; and 2055 East Technology Circle, Tempe) in the Plan Supplement.

**EEE. Provisions Regarding Structure Tone, LLC.**

103. Notwithstanding anything to the contrary herein, in the Plan, or in the Schedule of Assumed Executory Contracts and Unexpired Leases, (i) Structure Tone, LLC ("Structure Tone") shall not be barred or prohibited from challenging, objecting to, or denying the validity and finality of the Cure due and owing to Structure Tone as of the date of filing of the Plan

Supplement, *provided* that any such challenge, objection, or denial shall be asserted by Structure Tone within five (5) Business Days of entry of this Confirmation Order; (ii) any monetary or nonmonetary obligations that come due on an assumed Executory Contract between Structure Tone and the Debtors (a "Structure Tone Assumed Contract") between the filing of the Plan Supplement and the later of the effective date of assumption or assumption and assignment of a Structure Tone Assumed Contract shall be paid in full in Cash or otherwise satisfied by the Debtors as and when they come due; (iii) any monetary obligations that accrue under any Structure Tone Assumed Contract assumed and assigned to the Purchaser pursuant to the Plan from the date of the Debtors' filing of the Plan Supplement through the later of the effective date of assumption or assumption and assignment, to the extent such amounts come due after the later of the effective date of assumption or assumption and assignment, shall be paid or satisfied in full by either the Debtors or the Purchaser, as between them subject to the express terms of the Purchase Agreement; and (iv) no provision shall be construed as releasing any Claim that has been or may be asserted by Structure Tone under any Structure Tone Assumed Contract upon assumption, including (A) a Cure Claim or (B) an Administrative Claim unless and until all monetary and nonmonetary obligations, subject to section 365 of the Bankruptcy Code, as of the effective date of assumption have been satisfied to the extent required under the Bankruptcy Code; *provided*, *however*, with respect to the foregoing, and to the extent payable by the Debtors, any such Claim shall be filed by the later of (A) the Administrative Claims Bar Date, or (B) thirty (30) days after the effective date of assumption, or (C) such other date as may be otherwise agreed in writing (email being sufficient) with the consent of the Purchaser and the

Required Consenting Term Lenders (not to be unreasonably withheld), between the Debtors or the Post-Effective Date Debtors and Structure Tone; and *provided further* that (x) in the absence of filing any such Claim and any Claim under clause (i) of this paragraph 103 of section II by such deadlines, any such Claim shall be barred and extinguished and (y) the existence of a pending dispute as to an amount described in clauses (i), (ii), or (iii) of this paragraph 103 of section II shall not preclude or limit the effectiveness of any assumption or assumption and assignment of the underlying Structure Tone Assumed Contract, and the Debtors or the Post-Effective Date Debtors or, with respect to clause (iii), to the extent expressly set forth in the Purchase Agreement, the Purchaser, as applicable, shall pay any amounts on account of such amounts as agreed between the Debtors or the Post-Effective Date Debtors or with respect to clause (iii) to the extent expressly set forth in the Purchase Agreement, the Purchaser, as applicable, and the applicable Counterparty or as ordered by the Court.

**FFF. Provisions Regarding Iron Mountain.**

104. Notwithstanding anything to the contrary in this Confirmation Order, the Plan, or Plan Supplement, between the Confirmation Date and the effective date of assumption and assignment of such Executory Contracts, all rights are expressly reserved solely related to Cure objections on behalf of Iron Mountain, with respect to the Cure amounts (including recovery of attorneys' fees and costs, if applicable), listed on account of the Executory Contracts that Iron Mountain is party to in the Plan Supplement.

**GGG. Additional Provisions for Specified Parties.**

105. Following the Effective Date, notwithstanding any of the release, discharge, injunction**,** or waiver provisions to the contrary set forth in the Plan, nothing in the Plan or the Confirmation Order shall modify the rights, if any, of ACPF NOVA Data Center, LLC, RREEF CPIF 2425 Busse Road, LLC, Sabey Datacenters LLC, and International Gateway West LLC (the "Specified Parties") to assert any right of setoff or recoupment that such counterparty may have under applicable bankruptcy or non-bankruptcy law, including, but not limited to, the ability, if any, of such counterparties to setoff or recoup a security deposit held pursuant to the terms of their Unexpired Leases.

106. Subject to paragraph 57 of section II hereof, with respect to Unexpired Leases held by the Specified Parties, nothing in the Plan or in the Confirmation Order shall modify the Debtors' or Post-Effective Date Debtors' obligation (or the Purchaser's obligation, if so expressly agreed between the Debtors and the Purchaser pursuant to the Purchase Agreement), as applicable, to pay: (1) amounts owed under the Unexpired Leases to the extent accruing prior to the effective date of assumption of such Unexpired Lease, such as for common area maintenance, insurance, taxes, and similar charges, and any regular or periodic ordinary course year-end adjustments and reconciliations of such charges provided for under the terms of the Unexpired Lease, as such charges become due in the ordinary course in accordance with the terms of the Unexpired Lease; (2) any percentage rent that may come due under the assumed Unexpired Lease to the extent it accrues prior to the Effective Date; (3) any other obligations, including indemnification obligations (if any) that arise from third-party claims asserted with

respect to or arising from the Debtors' use and occupancy of the premises prior to the Effective Date for which the Debtors had a duty to indemnify such landlord pursuant to any Unexpired Lease, or the obligation of the Debtors or the Post-Effective Date Debtors (or the Purchaser, if so expressly agreed between the Debtors and the Purchaser pursuant to the Purchase Agreement) to pay any postpetition expenses under such Unexpired Leases to the extent they come due under the Unexpired Leases prior to the Effective Date; and (4) any unpaid cure amounts to the extent they accrue prior to the effective date of assumption and assignment; *provided* that the existence of a pending dispute as to an amount described in this paragraph 106 shall not preclude or limit the effectiveness of any assumption or assumption and assignment of the underlying Unexpired Leases in accordance with the Purchase Agreement, and the Debtors or the Post-Effective Date Debtors, as applicable, shall pay any amounts on account of such amounts as agreed between the Debtors or the Post-Effective Date Debtors and the applicable Counterparty or as ordered by the Court. Any obligations in this paragraph 106 that come due after the Effective Date shall be paid as agreed between the Debtors or the Post-Effective Date Debtors, on the one hand, and the Purchaser, on the other hand.

**HHH. Additional Provisions for NVIDIA Corporation.**

107. With respect to all contracts between NVIDIA Corporation and the Debtors, including but not limited to all contracts listed in the *Notice of Filing of First Amended Plan Supplement for the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 713] (the "Contracts"), notwithstanding anything to the contrary in this Confirmation Order, the Plan,

or the Plan Supplement, between entry of the Confirmation Order and the effective date of assumption and assignment of the Contracts, all rights are expressly reserved to file an objection with respect to NVIDIA Corporation's cure objections filed on November 10, 2023 [Docket No. 680] (the "Cure Objections") solely related to Cure Objections on behalf of NVIDIA Corporation, with respect to both non-monetary and monetary Cure Objections and amounts (including recovery of attorneys' fees and costs if applicable). For the avoidance of doubt, the Debtors, the Purchaser, and NVIDIA Corporation agree that the Debtors' entire contractual relationship with NVIDIA Corporation existing as of Confirmation Date shall remain intact and shall be assumed and assigned in its entirety in accordance with the Purchase Agreement.

108. With respect to that certain proposed service order Q-57519-3 (the "Service Order"), the Debtors, the Purchaser, and NVIDIA Corporation agree to cooperate in good faith to negotiate and finalize the termination of the Debtors' services with respect to the Service Order prior to the Effective Date.

# Exhibit A

## Plan

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF NEW JERSEY**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al.*,[1] | ) | Case No. 23-14853 (JKS) |
| Debtors. | ) | (Jointly Administered) |

# FOURTH AMENDED JOINT PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: November 13, 2023

[1] A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed Claims and Noticing Agent at https://www.kccllc.net/cyxtera. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida, 33134.

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## INTRODUCTION

Cyxtera Technologies, Inc. and the above-captioned debtors and debtors in possession propose the Plan for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in Article I.A of the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Holders of Claims against or Interests in the Debtors may refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations, historical financial information, and projections of future operations as well as a summary and description of the Plan, the Restructuring Transactions, and certain related matters. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## ARTICLE I.
## DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

*A. Defined Terms.*

As used in the Plan, capitalized terms have the meanings set forth below.

1. "*Acquired Assets*" has the meaning set forth in the Purchase Agreement.

2. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Estates under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims in the Chapter 11 Cases; (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911–1930; (d) Adequate Protection Claims (as defined in the DIP Orders); (e) Restructuring Expenses; (f) the Disinterested Director Fee Claims; (g) the Canadian Fee Claims; and (h) the Breakup Fee and the Expense Reimbursement (each as defined in the Purchase Agreement), to the extent payable under the Purchase Agreement.

3. "*Administrative Claims Bar Date*" means the deadline for Filing requests for payment of Administrative Claims, which: (a) with respect to Administrative Claims other than Professional Fee Claims, shall be thirty (30) days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be forty-five (45) days after the Effective Date.

4. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code as if the reference Entity were a debtor in a case under the Bankruptcy Code.

5. "*Agents*" means, collectively, the DIP Agent, the Prepetition Agent, the Bridge Facility Agent, the New Takeback Facility Agent, and the Receivables Program Agent, including, in each case, any successors thereto.

6. "*AHG*" means that certain ad hoc group of Holders of Term Loan Claims represented by the AHG Advisors.

7. "*AHG Advisors*" means (i) Gibson, Dunn & Crutcher LLP, (ii) Houlihan Lokey Capital, Inc., (iii) Gibbons P.C, and (iv) Goodmans LLP.

8. "*Allowed*" means, with respect to any Claim, except as otherwise provided herein: (a) a Claim that is evidenced by a Proof of Claim timely Filed by the applicable bar date (or for which Claim a Proof of Claim is not

required under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; or (c) a Claim Allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court; *provided* that, with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or, if such an objection is so interposed, such Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court, and Holders of such Claims shall not receive any distributions under the Plan on account of such Claims or Interests. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. For the avoidance of doubt, a Proof of Claim Filed after the applicable bar date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. "Allow" and "Allowing" shall have correlative meanings.

9. "*Asset Sale*" means a Sale Transaction in which the Debtors sell all or substantially all of their assets to the Purchaser pursuant to the Purchase Agreement.

10. "*Assumption or Rejection Objection Deadline*" means the date that is ten (10) days after filing of the Schedule of Assumed Executory Contracts and Unexpired Leases; *provided* that if any Executory Contract or Unexpired Lease is added to or removed from such schedule, or its treatment, including payment of Cure or assignment, is altered pursuant to an amended Schedule of Assumed Executory Contracts and Unexpired Leases, then the Assumption or Rejection Objection Deadline solely with respect to such Executory Contract or Unexpired Lease shall be ten (10) days after filing of the amended Schedule of Assumed Executory Contracts and Unexpired Leases that sets forth such modification.

11. "*Avoidance Actions*" means any and all actual or potential Claims and Causes of Action to avoid a transfer of property or an obligation incurred by the Debtors arising under chapter 5 of the Bankruptcy Code, including sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 552, and 553(b) of the Bankruptcy Code, and applicable non-bankruptcy law.

12. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532.

13. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of New Jersey.

14. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

15. "*Bidding Procedures*" means the bidding procedures attached as Exhibit 1 to the Bidding Procedures Order.

16. "*Bidding Procedures Documents*" means the Bidding Procedures, the Bidding Procedures Motion, and the Bidding Procedures Order.

17. "*Bidding Procedures Motion*" means the *Debtors' Motion for Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 95].

18. "*Bidding Procedures Order*" means the *Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 180].

19. "*Bridge Facility*" means that certain super senior financing facility issued pursuant to the Bridge Facility Credit Agreement.

20. "*Bridge Facility Agent*" means Wilmington Savings Fund Society, FSB, in its capacity as administrative and collateral agent under the Bridge Facility Credit Agreement.

21. "*Bridge Facility Credit Agreement*" means that certain Frist Lien Priority Credit Agreement dated as of May 4, 2023, by and among Initial Holdings, the Prepetition Borrower, the lenders party thereto, and the Bridge Facility Agent.

22. "*Bridge Facility Documents*" means the Bridge Facility Credit Agreement and any other documentation necessary to effectuate the incurrence of the Bridge Facility.

23. "*Business Day*" means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

24. "*Canadian Fee Claims*" means all unpaid fees and expenses as of the Effective Date due to (i) Gowling WLG (Canada) LLP, in its capacity as Cyxtera's Canadian counsel pursuant to its engagement letter with Cyxtera; (ii) Alvarez & Marsal Canada Inc., in its capacity as the information officer in *In the Matter of Cyxtera Technologies Inc.*, (2023) Court File No. 2301-07385 (Can. Alta. KB); and (iii) McMillan LLP, in its capacity as counsel to Alvarez & Marsal Canada Inc. On the Effective Date, the Canadian Fee Claims shall be deemed Allowed Administrative Claims against Cyxtera.

25. "*Cash*" means cash and cash equivalents, including bank deposits, checks, and other similar items in legal tender of the United States of America.

26. "*Cash Collateral*" has the meaning set forth in section 363(a) of the Bankruptcy Code.

27. "*Cause of Action*" means any action, claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, cost, account, defense, remedy, offset, power, privilege, proceeding, license, and franchise of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law (including under any state or federal securities laws). Causes of Action include: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code, and (e) any state law fraudulent transfer claim.

28. "*Chapter 11 Cases*" means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and (b) when used with reference to all the Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

29. "*Claim*" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

30. "*Claims and Noticing Agent*" means Kurtzman Carson Consultants LLC, the claims, noticing, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

31. "*Claims Objection Deadline*" means the deadline for objecting to a Claim asserted against a Debtor, which shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by the Debtors or the Post-Effective Date Debtors, as applicable, or by an order of the Bankruptcy Court for objecting to such Claims.

32. "*Claims Register*" means the official register of Claims and Interests in the Debtors maintained by the Claims and Noticing Agent.

33. "*Class*" means a class of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

34. "*CM/ECF*" means the Bankruptcy Court's Case Management and Electronic Case Filing system.

35. "*Committee*" means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code as set forth in the *Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 133] and as may be reconstituted from time to time.

36. "*Confirmation*" means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases.

37. "*Confirmation Date*" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

38. "*Confirmation Hearing*" means the hearing held by the Bankruptcy Court on Confirmation of the Plan, pursuant to Bankruptcy Rule 3020(b)(2) and sections 1128 and 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

39. "*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, the form and substance of which shall be subject to the consent rights set forth in the RSA, and, in the event of a Sale Transaction, approving the Asset Sale and otherwise subject to the consent rights in the Purchase Agreement.

40. "*Consenting Lenders*" means, collectively, the Holders of First Lien Claims that are signatories to the RSA or any subsequent Holder of First Lien Claims that becomes party thereto in accordance with the terms of the RSA, each solely in their capacity as such.

41. "*Consenting Sponsors*" means, collectively, the Holders of Existing Equity Interests that are signatories to the RSA or any subsequent Holder of Existing Equity Interests that becomes party thereto in accordance with the terms of the RSA, each solely in their capacity as such.

42. "*Consenting Stakeholders*" means, collectively, the Consenting Lenders and the Consenting Sponsors.

43. "*Consummation*" means the occurrence of the Effective Date.

44. "*Cure*" means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor's defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code. The amount of a Cure payment, if any, is $0.00 unless otherwise indicated in the Schedule of Assumed Executory Contracts and Unexpired Leases. The proposed Cure payment for any Executory Contract or Unexpired Lease for which no amount is set forth in the Schedule of Assumed Executory Contracts and Unexpired Leases shall be deemed to equal $0.00.

45. "*Cyxtera*" means Cyxtera Technologies, Inc.

46. "*D&O Liability Insurance Policies*" means all insurance policies (including any "tail policy") covering any of the Debtors' current or former directors', managers', officers' and/or employees' liability and all agreements, documents, or instruments relating thereto.

47. "*Debtor Release*" means the release set forth in Article VIII.C hereof.

48. "*Debtors*" means, collectively, each of the following: Cyxtera Technologies, Inc., Cyxtera Canada TRS, ULC, Cyxtera Canada, LLC, Cyxtera Communications Canada, ULC, Cyxtera Communications, LLC, Cyxtera Data Centers, Inc., Cyxtera DC Holdings, Inc., Cyxtera DC Parent Holdings, Inc., Cyxtera Digital Services, LLC, Cyxtera Employer Services, LLC, Cyxtera Federal Group, Inc., Cyxtera Holdings, LLC, Cyxtera Management, Inc., Cyxtera Netherlands B.V., Cyxtera Technologies Maryland, Inc., and Cyxtera Technologies, LLC.

49. "*Definitive Documents*" means, collectively and as applicable, (a) the Disclosure Statement; (b) the Solicitation Materials; (c) the New Organizational Documents; (d) the DIP Orders (and motion(s) seeking approval thereof); (e) the DIP Documents; (f) the New Takeback Facility Documents, (g) the Plan (and all exhibits thereto); (h) the Confirmation Order; (i) the order of the Bankruptcy Court approving the Disclosure Statement and the other Solicitation Materials (and motion(s) seeking approval thereof); (j) all material pleadings Filed by the Debtors in connection with the Chapter 11 Cases (and related orders), including the first day pleadings and all orders sought pursuant thereto; (k) the Plan Supplement; (l) the MIP Documents; (m) any and all filings with or requests for regulatory or other approvals from any governmental entity or unit, other than ordinary course filings and requests, necessary or desirable to implement the Restructuring Transactions; (n) the Bridge Facility Documents; (o) the Bidding Procedures Documents; (p) the Purchase Agreement; and (q) such other agreements, instruments, and documentation as may be necessary to consummate and document the transactions contemplated by the Plan. For the avoidance of doubt, the form and substance of each Definitive Document shall be subject to the consent rights set forth in the RSA and, with respect to any Definitive Document that relates to the Purchaser, the Purchase Agreement, or the Asset Sale, such Definitive Document shall be in form and substance reasonably acceptable to the Purchaser unless otherwise provided for in the Purchase Agreement or the Plan.

50. "*DIP Agent*" means the administrative agent and collateral agent under the DIP Facility.

51. "*DIP Agent Advisors*" means ArentFox Schiff LLP, in its capacity as counsel to the DIP Agent and the Prepetition Priority Administrative Agent (as defined in the DIP Orders).

52. "*DIP Claims*" means any Claim against any Debtor derived from, based upon, or arising under the DIP Facility, the DIP Credit Agreement, or the other DIP Documents.

53. "*DIP Credit Agreement*" means that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of June 7, 2023, by and among Initial Holdings, Prepetition Borrower, the lenders party thereto, and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent.

54. "*DIP Documents*" means, collectively, the DIP Credit Agreement and any other documents governing the DIP Facility, including the DIP Orders, as such documents may be amended, supplemented, or otherwise modified from time to time in accordance with their terms.

55. "*DIP Facility*" means the superpriority senior secured debtor-in-possession credit facility provided for under the DIP Documents.

56. "*DIP Lenders*" means, collectively, each lender under the DIP Facility.

57. "*DIP Loans*" means the loans issued pursuant to the DIP Credit Agreement.

58. "*DIP Orders*" means, collectively, the Interim DIP Order and the Final DIP Order.

59. "*Disbursing Agent*" means, with respect to all distributions to be made under the Plan other than distributions on account of General Unsecured Claims, the Debtors, the Post-Effective Date Debtors, or the Plan Administrator, or any Entity the Debtors, the Post-Effective Date Debtors, or the Plan Administrator selects to make or to facilitate distributions in accordance with the Plan, which Entity may include the Claims and Noticing Agent and, with the respective Agent's prior written consent, the Agents, as applicable.

60. "*Disclosure Statement*" means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

61. "*Disclosure Statement Order*" means the *Order Approving (I) the Adequacy of the Disclosure Statement, (II) the Solicitation Procedures, (III) the Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 563].

62. "*Disinterested Director Fee Claims*" means all unpaid fees and expenses as of the Effective Date due to the disinterested directors of Cyxtera pursuant to their respective director agreements with Cyxtera. On the Effective Date, the Disinterested Director Fee Claims shall be deemed Allowed Administrative Claims against Cyxtera.

63. "*Disputed*" means, as to a Claim or an Interest, a Claim or an Interest: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (c) with respect to which a party in interest has Filed a Proof of Claim or Proof of Interest or otherwise made a written request to a Debtor for payment, without any further notice to or action, order, or approval of the Bankruptcy Court.

64. "*Disputed Claims Reserve Amount*" means Cash in an amount to be determined by the Debtors in consultation with the Required Consenting Term Lenders, which amount shall be used to fund the Disputed Claims Reserve.

65. "*Disputed Claims Reserve*" means the account to be established on the Effective Date and funded with the Disputed Claims Reserve Amount for distribution as set forth in Article VII.G, if any.

66. "*Distributable Consideration*" means, in the event of a Sale Transaction, all Cash of the Debtors or the Post-Effective Date Debtors, as applicable, on or after the Effective Date, including any Cash comprising the Purchase Price and the Residual Cash, after payment of the Administrative Claims, DIP Claims, Professional Fee Claims, Disinterested Director Fee Claims, Canadian Fee Claims, Restructuring Expenses, Priority Tax Claims, Receivables Program Claims, Other Secured Claims, and Other Priority Claims, each as set forth in the Plan, and funding the Professional Fee Escrow Account, the GUC Trust, the Disputed Claims Reserve, the Wind-Down Reserve, and the Priority Claims Reserve, as applicable, *plus* any non-Cash consideration comprising the Purchase Price *plus* any proceeds generated by any Cause of Action retained by the Post-Effective Date Debtors.

67. "*Distribution Record Date*" means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the first day of the Confirmation Hearing or such other date agreed to by the Debtors and the Required Consenting Term Lenders.

68. "*Distribution Reserve Accounts*" means, in the event of an Asset Sale, the Priority Claims Reserve and the Wind-Down Reserve established pursuant to the Plan.

69. "*Effective Date*" means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect, and (b) all conditions precedent to the occurrence of the Effective Date set forth in Article IX.A of the Plan have been satisfied or waived in accordance with Article IX.B of the Plan. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

70. "*Entity*" means any entity, as defined in section 101(15) of the Bankruptcy Code.

71. "*Equity Investment Transaction*" means a restructuring under the Plan pursuant to which, among other things, the Purchaser purchases all or substantially all of the New Common Stock in exchange for the Purchase Price.

72. "*Equity Security*" means any equity security, as defined in section 101(16) of the Bankruptcy Code, in a Debtor.

73. "*Estate*" means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

74. "*Exchange Act*" means the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a et seq, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

75. "*Excluded Assets*" has the meaning set forth in the Purchase Agreement.

76. "*Excluded Liabilities*" has the meaning set forth in the Purchase Agreement.

77. "*Exculpated Parties*" means, collectively: (a) the Debtors; (b) the Post-Effective Date Debtors, (c) the Committee and the members of the Committee; and (d) with respect to each of the foregoing Entities in clauses (a) through (c), each such Entity's current and former control persons, directors, members of any committees of any Entity's board of directors or managers, equity holders (regardless of whether such interests are held directly or indirectly), principals, members, employees, agents, advisory board members, financial advisors, attorneys (including any attorneys or other professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

78. "*Executory Contract*" means a contract to which one or more of the Debtors are a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

79. "*Existing Equity Interests*" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor, and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of Cyxtera (in each case whether or not arising under or in connection with any employment agreement) immediately prior to the consummation of the transactions contemplated in the Plan.

80. "*Federal Judgment Rate*" means the federal judgment rate in effect as of the Petition Date.

81. "*File*" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases. "Filed" and "Filing" shall have correlative meanings.

82. "*Final DIP 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 the Automatic Stay, and (VI) Granting Related Relief* [Docket No. 297].

83. "*Final Order*" means, as applicable, an order or judgment in any U.S. or non-U.S. forum of the Bankruptcy Court or any other court of competent jurisdiction (including any Canadian or other non-U.S. court) with respect to the relevant subject matter that has not been reversed, vacated, stayed, modified, or amended and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing thereof has been timely sought, or, if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied, or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing shall have expired; *provided*, however, that no order or judgment shall fail to be a "Final Order" solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

84. "*Final Receivables Program Order*" means the *Final 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, and (III) Granting Related Relief* [Docket No. 295].

85. "*First Lien Claims*" means, collectively, the RCF Claims and the Term Loan Claims.

86. "*First Lien Credit Agreement*" means that certain First Lien Credit Agreement, dated as of May 17, 2017, by and among the Prepetition Borrower, Initial Holdings, the lenders from time to time party thereto, the issuers of letters of credit thereunder, and the Prepetition Agent, as the same may be amended, supplemented, or otherwise modified from time to time.

87. "*First Lien Credit Documents*" means the First Lien Credit Agreement and any other documentation necessary to effectuate the incurrence of the Revolving Credit Facility or the Term Loan Facilities.

88. "*General Unsecured Claim*" means any Claim that is not (a) an Administrative Claim, (b) a Professional Fee Claim, (c) a Priority Tax Claim, (d) a Secured Tax Claim, (e) a DIP Claim, (f) an Other Secured Claim, (g) an Other Priority Claim, (h) a First Lien Claim, (i) a Receivables Program Claim, (j) an Intercompany Claim, (k) a Section 510 Claim, (l) a Disinterested Director Fee Claim, (m) a Canadian Fee Claim, or (n) a Restructuring Expense.

89. "*Governing Body*" means, in each case in its capacity as such, the board of directors, board of managers, manager, managing member, general partner, investment committee, special committee, or such similar governing body of any of the Debtors or the Post-Effective Date Debtors, as applicable.

90. "*Governmental Unit*" means any governmental unit, as defined in section 101(27) of the Bankruptcy Code.

91. "*GUC Trust*" means the trust established on the Effective Date in accordance with the Plan to hold the GUC Trust Assets and administer Allowed General Unsecured Claims pursuant to the GUC Trust Agreement.

92. "*GUC Trust Agreement*" means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the GUC Trust to be entered into on or before the Effective Date between the Debtors and the GUC Trustee, which agreement shall be in form and substance acceptable to the Debtors, the Committee, and the Required Consenting Term Lenders.

93. "*GUC Trust Assets*" means $8.65 million in Cash to be transferred by the Debtors to the GUC Trust on the Effective Date.

94. "*GUC Trustee*" means, in its capacity as such, the Person selected by the Committee in consultation with the Debtors and the Required Consenting Term Lenders, and any successor thereto, in accordance with the GUC Trust Agreement.

95. "*GUC Trust Fees and Expenses*" means all reasonable and documented fees, expenses, and costs (including any taxes imposed on or payable by the GUC Trust or in respect of the GUC Trust Assets) incurred by the GUC Trust, any professionals retained by the GUC Trust, and any additional amount determined necessary by the GUC Trustee to adequately reserve for the operating expenses of the GUC Trust.

96. "*GUC Trust Net Assets*" means the GUC Trust Assets *less* the GUC Trust Fees and Expenses.

97. "*Holder*" means an Entity that is the record owner of a Claim or Interest. For the avoidance of doubt, affiliated record owners of Claims or Interests managed or advised by the same institution shall constitute separate Holders.

98. "*Impaired*" means "impaired" within the meaning of section 1124 of the Bankruptcy Code.

99. "*Initial Holdings*" means Cyxtera DC Parent Holdings, Inc.

100. "*Intercompany Claim*" means any Claim against a Debtor held by another Debtor.

101. "*Intercompany Interest*" means an Interest in a Debtor held by another Debtor.

102. "*Interest*" means, collectively, (a) any Equity Security in any Debtor and (b) any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, or repurchase rights; convertible, exercisable, or exchangeable securities; or other agreements, arrangements, or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

103. "*Interim DIP 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 the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 70].

104. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

105. "*Lien*" means a lien as defined in section 101(37) of the Bankruptcy Code.

106. "*Management Incentive Plan*" means, in the event of a Recapitalization Transaction or an Equity Investment Transaction, the management incentive plan reserving up to 10 percent of the New Common Stock on a fully diluted basis, with structure, awards, and terms of the management incentive plan to be determined by the New Board, which management incentive plan shall be acceptable to the Required Consenting Term Lenders and the Debtors.

107. "*MIP Documents*" means, collectively, the documents governing the Management Incentive Plan, as such documents may be amended, supplemented, or otherwise modified from time to time in accordance with their terms.

108. "*New Board*" means, in the event of a Recapitalization Transaction or an Equity Investment Transaction, the board of directors or similar Governing Body of Reorganized Cyxtera, which shall be acceptable to the Required Consenting Term Lenders, including, without limitation, with respect to the number and identity of the directors.

109. "*New Common Stock*" means, in the event of a Recapitalization Transaction or an Equity Investment Transaction, a single class of common equity interests issued by Reorganized Cyxtera on the Effective Date.

110. "*New Organizational Documents*" means, in the event of a Recapitalization Transaction or an Equity Investment Transaction, the documents providing for corporate governance of Reorganized Cyxtera and the other Post-Effective Date Debtors, as applicable, including charters, bylaws, operating agreements, or other organizational documents or shareholders' agreements, as applicable, which shall be consistent with section 1123(a)(6) of the Bankruptcy Code (as applicable) and in form and substance subject to the consent rights set forth in the RSA and, in the event of a Sale Transaction, in form and substance reasonably acceptable to the Purchaser.

111. "*New Takeback Facility*" means, in the event of a Recapitalization Transaction, a new senior secured, first lien, "first out" term loan facility, in an initial aggregate principal amount of $200,468,511.87 *plus* any accrued and unpaid interest, fees, costs, charges, expenses, and any other accrued and unpaid amounts under the DIP Documents as of the Effective Date, to be incurred by the Debtors on the Effective Date in connection with effectuating the Recapitalization Transaction in accordance with the Plan and the Restructuring Transactions Memorandum, in each case as determined by the Debtors and in form and substance subject to the consent rights set forth in the RSA.

112. "*New Takeback Facility Agent*" means the agent under the New Takeback Facility Credit Agreement.

113. "*New Takeback Facility Credit Agreement*" means the credit agreement with respect to the New Takeback Facility, as may be amended, supplemented, or otherwise modified from to time and which shall be in form and substance subject to the consent rights set forth in the RSA.

114. "*New Takeback Facility Documents*" means the New Takeback Facility Credit Agreement and any other documentation necessary or appropriate to effectuate the incurrence of the New Takeback Facility, each of which shall be in form and substance subject to the consent rights set forth in the RSA.

115. "*New Takeback Facility Loans*" means loans issued under the New Takeback Facility.

116. "*Other Priority Claim*" means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

117. "*Other Secured Claim*" means any Secured Claim against the Debtors other than the DIP Claims, the Priority Tax Claims, the Receivables Program Claims, or the First Lien Claims.

118. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

119. "*Petition Date*" means the date on which the Debtors commenced the Chapter 11 Cases.

120. "*Plan"* means this joint plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, the RSA, the Purchase Agreement, or the terms hereof, as the case may be, and the Plan Supplement, which is incorporated herein by reference, including all exhibits and schedules hereto and thereto.

121. "*Plan Administrator*" means, in the event of an Asset Sale, the Person selected by the Debtors and the Required Consenting Term Lenders and, in the event of an Asset Sale, after consultation with the Purchaser, to administer all assets of the Estates vested in the Post-Effective Date Debtors, and thereafter, all assets held from time to time by the Post-Effective Date Debtors.

122. "*Plan Administrator Agreement*" means that certain agreement entered into no later than the Effective Date setting forth, among other things, the Plan Administrator's rights, powers, obligations, and compensation, which shall be in form and substance subject to the consent rights set forth in the RSA.

123. "*Plan Distribution*" means a payment or distribution to Holders of Allowed Claims, Allowed Interests, or other eligible Entities under and in accordance with the Plan.

124. "*Plan Supplement*" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, subject to the consent rights set forth in the Purchase Agreement (in the event of an Asset Sale), and as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed by the Debtors, to the extent reasonably practicable, no later than three (3) days before the deadline to vote to accept or reject the Plan or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, including the following, as applicable: (a) the New Organizational Documents; (b) the identity and members of the New Board; (c) the Schedule of Retained Causes of Action; (d) the New Takeback Facility Documents; (e) the Restructuring Transactions Memorandum; (f) the Schedule of Assumed Executory Contracts and Unexpired Leases; (g) the Schedule of Rejected Executory Contracts and Unexpired Leases; (h) the GUC Trust Agreement; (i) in the event of an Asset Sale, the Plan Administrator Agreement and the identity of the Plan Administrator; (j) in the event of a Sale Transaction, the Purchase Agreement; and (k) additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

125. "*Post-Effective Date Debtors*" means the Debtors after the Effective Date or the Plan Administrator, as applicable.

126. "*Prepetition Agent*" means Citibank, N.A., in its capacity as administrative and collateral agent under the First Lien Credit Agreement.

127. "*Prepetition Borrower*" means Cyxtera DC Holdings, Inc. (f/k/a Colorado Buyer Inc.).

128. "*Prepetition First Lien Administrative Agent Advisors*" means (i) Davis Polk & Wardwell LLP, (ii) Greenberg Traurig, LLP, and (iii) FTI Consulting, Inc.

129. "*Priority Claims*" means, collectively, Administrative Claims, Priority Tax Claims, and Other Priority Claims.

130. "*Priority Claims Reserve*" means, in the event of an Asset Sale, the account to be established and maintained by the Plan Administrator on the Effective Date and funded with the Priority Claims Reserve Amount for distribution to Holders of Priority Claims (except for Professional Fee Claims) as set forth in Article II.

131. "*Priority Claims Reserve Amount*" means, in the event of an Asset Sale, Cash in an amount to be determined in the Debtors' reasonable business judgment and in consultation with the Required Consenting Term Lenders, which amount shall be used by the Plan Administrator to fund the Priority Claims Reserve.

132. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

133. "*Professional*" means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

134. "*Professional Fee Amount*" means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses Professionals reasonably estimate in good faith that they have incurred or will incur in rendering services to the Debtors as set forth in Article II.C of the Plan.

135. "*Professional Fee Claim*" means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

136. "*Professional Fee Escrow Account*" means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Amount.

137. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable bar date.

138. "*Proof of Interest*" means a proof of Interest filed in any of the Debtors in the Chapter 11 Cases.

139. "*Purchase Agreement*" means the purchase agreement entered into by the Debtors and the Purchaser in accordance with the Bidding Procedures, which shall be in form and substance subject to the consent rights set forth in the RSA and acceptable to the Purchaser and the Required Consenting Term Lenders.

140. "*Purchase Price*" has the meaning set forth in the Bidding Procedures.

141. "*Purchaser*" means, (a) in the event that the Debtors, with the consent of the Required Consenting Term Lenders, determine to pursue the Asset Sale, Phoenix Data Center Holdings LLC and its affiliates that are Designees under and as defined in the Purchase Agreement, or (b) in the event that the Debtors, with the consent of the Required Consenting Term Lenders, determine to pursue the Equity Investment Transaction, the "Purchaser" under and as defined in the Purchase Agreement.

142. "*RCF Claims*" means any Claim on account of the Revolving Credit Facility and any claim against any non-Debtor Affiliate of a Debtor under such Revolving Credit Facility.

143. "*Recapitalization Transaction*" means, in the event that the Debtors, with the consent of the Required Consenting Term Lenders, do not determine to pursue a Sale Transaction, the restructuring transaction pursuant to the Plan, pursuant to which, among other things, Holders of First Lien Claims receive 100 percent of the New Common Stock, subject to dilution by the Management Incentive Plan.

144. "*Receivables Program*" means that certain trade receivables securitization facility pursuant to the Receivables Program Documents and approved by the Final Receivables Program Order.

145. "*Receivables Program Agent*" means, collectively, PNC Bank, National Association, in its capacity as Administrative Agent under the Receivables Program Documents, and PNC Capital Markets LLC, in its capacity as Structuring Agent under the Receivables Program Documents, including, in each case, any successors thereto.

146. "*Receivables Program Claims*" means any Claims constituting Receivables Program Obligations (as defined in the Final Receivables Program Order).

147. "*Receivables Program Documents*" means, collectively, the "Transaction Documents" as defined in the Final Receivables Program Order, as such documents may be amended, supplemented, or otherwise modified from time to time in accordance with their terms.

148. "*Reinstate*" means reinstate, reinstated, or reinstatement with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code. "Reinstated" and "Reinstatement" shall have correlative meanings.

149. "*Related Party*" means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any Governing Body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

150. "*Released Party*" means, each of, and in each case in its capacity as such: (a) each Debtor; (b) each Post-Effective Date Debtor; (c) each Consenting Stakeholder; (d) each Releasing Party; (e) each Agent; (f) each DIP Lender; (g) in the event of a Sale Transaction, the Purchaser; (h) the Committee and each member of the Committee; (i) each current and former Affiliate of each Entity in clause (a) through the following clause (j); (j) each Related Party of each Entity in clause (a) through this clause (j); *provided* that in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases described in Article VIII.D of the Plan; or (y) timely objects to the releases contained in Article VIII.D of the Plan and such objection is not resolved before Confirmation.

151. "*Releasing Party*" means, each of, and in each case in its capacity as such: (a) the Debtors; (b) the Post-Effective Date Debtors; (c) each DIP Lender; (d) each Agent; (e) each Consenting Stakeholder; (f) in the event of a Sale Transaction, the Purchaser; (g) the Committee and each member of the Committee; (h) all Holders of Claims that vote to accept the Plan; (i) all Holders of Claims who are deemed to accept the Plan but who do not affirmatively opt out of the releases provided for in the Plan by checking the box on the applicable notice of non-voting status indicating that they opt not to grant the releases provided for in the Plan; (j) all Holders of Claims who abstain from voting on the Plan, other than those who were not sent a Ballot or an Opt Out Form (each as defined in the Disclosure Statement Order), and who do not affirmatively opt out of the releases provided for in the Plan by checking the box on the applicable ballot indicating that they opt not to grant the releases provided for in the Plan; (k) all Holders of Claims or Interests who vote to reject the Plan or are deemed to reject the Plan and who do not affirmatively opt out of the releases provided for in the Plan by checking the box on the applicable ballot or

notice of non-voting status indicating that they opt not to grant the releases provided for in the Plan; (l) each current and former Affiliate of each Entity in clause (a) through (k); and (m) each Related Party of each Entity in clause (a) through (l) for which such Entity is legally entitled to bind such Related Party to the releases contained in the Plan under applicable law; *provided* that, for the avoidance of doubt, an Entity in clause (i) through clause (k) shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in Article VIII.D of the Plan; or (y) timely objects to the releases contained in Article VIII.D of the Plan and such objection is not resolved before Confirmation.

152. "*Reorganized Cyxtera*" means Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the Effective Date.

153. "*Required Consenting Term Lenders*" means, as of the relevant date, Consenting Lenders holding at least 66.67% of the aggregate outstanding principal amount of the Term Loan Claims that are held by Consenting Lenders.

154. "*Residual Cash*" means, in the event of a Sale Transaction, the sum of (a) any amounts remaining in the Professional Fee Escrow Account after payment in full of all Allowed Professional Fee Claims, (b) any amounts remaining in the Priority Claims Reserve after payment in full of all Allowed Priority Claims and Allowed Administrative Claims (other than Professional Fee Claims), (c) any amounts remaining in the Disputed Claim Reserve after the final resolution of Disputed Claims, and (d) any amounts remaining in the Wind-Down Reserve after entry of a final decree closing the last of the Chapter 11 Cases.

155. "*Restructuring Expenses*" means the reasonable and documented fees and expenses accrued from the inception of their respective engagements related to the implementation of the Restructuring Transactions and not previously paid by, or on behalf of, the Debtors of: (i) the AHG Advisors; (ii) the DIP Agent Advisors; and (iii) the Prepetition First Lien Administrative Agent Advisors.

156. "*Restructuring Term Sheet*" means the term sheet attached to the RSA as Exhibit B.

157. "*Restructuring Transactions*" means the transactions described in Article IV.B of the Plan.

158. "*Restructuring Transactions Memorandum*" means the description of the steps to be carried out to effectuate the Restructuring Transactions in accordance with the Plan and as set forth in the Plan Supplement, which shall be in form and substance acceptable to the Required Consenting Term Lenders, and, in the event of a Sale Transaction, the Purchaser.

159. "*Revolving Credit Facility*" means that certain first lien, multi-currency revolving credit facility (including the letters of credit issued thereunder) issued pursuant to the First Lien Credit Agreement.

160. "*RSA*" means that certain restructuring support agreement, dated as of May 4, 2023, by and among the Debtors and the Consenting Stakeholders, including all exhibits thereto (including the Restructuring Term Sheet), as may be amended, modified, or supplemented from time to time, in accordance with its terms.

161. "*Sale Transaction*" means, as applicable, either an Equity Investment Transaction or an Asset Sale.

162. "*Schedule of Assumed Executory Contracts and Unexpired Leases*" means a schedule to be included in the Plan Supplement, as determined by the Debtors, which shall be subject to the consent rights set forth in the RSA and, in the event of an Asset Sale, acceptable to the Purchaser and the Required Consenting Term Lenders and in all respects consistent with the terms of the Purchase Agreement, of certain Executory Contracts and Unexpired Leases (and their Cure amounts) to be assumed by the Debtors or assumed by the Debtors and assigned to the Purchaser, as applicable, pursuant to the Plan and the Purchase Agreement, as the same may be amended, modified, or supplemented from time to time by the Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable, in accordance with the Plan and, in the event of an Asset Sale, the Purchase Agreement, and with the consent of the Purchaser and the Required Consenting Term Lenders.

163. "*Schedule of Rejected Executory Contracts and Unexpired Leases*" means a schedule to be included in the Plan Supplement, as determined by the Debtors, which shall be subject to the consent rights set forth in the RSA and, in the event of an Asset Sale, acceptable to the Purchaser and the Required Consenting Term Lenders and in all respects consistent with the terms of the Purchase Agreement, of certain Executory Contracts and Unexpired Leases that will be rejected by the Debtors pursuant to the Plan and the Purchase Agreement (if applicable), as the same may be amended, modified, or supplemented from time to time by the Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable, in accordance with the Plan and with the consent of the Purchaser and the Required Consenting Term Lenders.

164. "*Schedule of Retained Causes of Action*" means the schedule of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time, which shall be subject to the consent rights set forth in the RSA and, in the event of a Sale Transaction, subject to the consent of the Purchaser.

165. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code, including any amendments or supplements thereto.

166. "*Section 510 Claim*" means any Claim or Interest against a Debtor subject to subordination under section 510(b) of the Bankruptcy Code, whether by operation of law or contract.

167. "*Secured Claim*" means a Claim: (a) secured by a valid, perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

168. "*Secured Tax Claim*" means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

169. "*Securities Act*" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

170. "*Security*" means any security, as defined in section 2(a)(1) of the Securities Act.

171. "*Solicitation Materials*" means, collectively, the solicitation materials with respect to the Plan.

172. "*Term Loan Claims*" means any claim on account of the Term Loan Facilities, including any claim against any non-Debtor Affiliate of a Debtor under such Term Loan Facilities.

173. "*Term Loan Facilities*" means those certain first lien term loan facilities issued pursuant to the First Lien Credit Agreement.

174. "*Third-Party Release*" means the release set forth in Article VIII.D of the Plan.

175. "*U.S. Trustee*" means the Office of the United States Trustee for the District of New Jersey.

176. "*Undrawn LC Facility Claims*" means any RCF Claims on account of the letters of credit provided under the First Lien Credit Agreement that are outstanding and undrawn as of the Distribution Record Date.

177. "*Undrawn LC Facility Claims Reserve*" has the meaning set forth in Article IV.D.4 of the Plan.

178. "*Unexpired Lease*" means a lease to which one or more of the Debtors are a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

179. "*Unimpaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

180. "*Wind Down*" means, in the event of an Asset Sale, the wind down and dissolution of the Debtors' Estates as set forth in Article IV.D.5.

181. "*Wind-Down Amount*" means, in the event of an Asset Sale, Cash in an amount to be determined by the Debtors with the consent of the Required Consenting Term Lenders, not to be unreasonably withheld, to fund the Wind Down, including any statutory fees payable pursuant to the Bankruptcy Code, in accordance with Article IV.D.5 of the Plan.

182. "*Wind-Down Reserve*" means, in the event of an Asset Sale, the account to be established and maintained by the Plan Administrator and funded with the Wind-Down Amount to fund the Wind Down in accordance with Article IV.D.5 of the Plan and for Plan Administrator purposes in accordance with Article IV.D.4.

*B. Rules of Interpretation.*

For purposes of the Plan: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; *provided* that nothing in this clause (ii) shall affect any party's consent rights (including those of the Purchaser in the event of a Sale Transaction) over any of the Definitive Documents or any amendments thereto (both as that term is defined herein and as it is defined in the RSA); (iii) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed, or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented in accordance with the Plan or Confirmation Order, as applicable; (iv) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and assigns; (v) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (vi) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (vii) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (viii) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document created or entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (ix) unless otherwise specified, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation and shall be deemed to be followed by the words "without limitation"; (x) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (xi) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (xii) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (xiii) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (xiv) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (xv) any immaterial effectuating provisions herein may be interpreted by the Post-Effective Date Debtors in such a manner that is consistent with the overall purpose and intent of the Plan, all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (xvi) unless otherwise specified and subject to the reasonable consent of the Required Consenting Term Lenders, any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

*C. Computation of Time.*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to

the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

*D. Governing Law.*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws (other than section 5-1401 and section 5-1402 of the New York General Obligations Law), shall govern the rights, obligations, construction, and implementation of the Plan; any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); and corporate governance matters; *provided* that corporate governance matters relating to the Debtors or the Post-Effective Date Debtors, as applicable, not incorporated in New York shall be governed by the laws of the state of incorporation or formation of the relevant Debtor or the Post-Effective Date Debtors, as applicable.

*E. Reference to Monetary Figures.*

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

*F. Reference to the Debtors and the Post-Effective Date Debtors.*

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors and the Post-Effective Date Debtors shall mean the Debtors and the Post-Effective Date Debtors, as applicable, to the extent the context requires.

*G. Controlling Document.*

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the terms of the relevant provision in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

*H. Nonconsolidated Plan.*

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against, and Interests in, the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

*I. Consultation, Notice, Information, and Consent Rights.*

Notwithstanding anything herein to the contrary, all consultation, information, notice, and consent rights of the parties to the RSA, as applicable, and as respectively set forth therein, with respect to the form and substance of the Plan, all exhibits to the Plan, the Plan Supplement, and all other Definitive Documents, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I.A hereof) and fully enforceable as if stated in full herein until such time as the RSA is terminated in accordance with its terms.

Failure to reference the rights referred to in the immediately preceding paragraph as such rights relate to any document referenced in the RSA, as applicable, shall not impair such rights and obligations.

In the event of an Asset Sale, notwithstanding anything to the contrary herein, all consultation, information, notice, and consent rights of the parties to the Purchase Agreement, as applicable, and as respectively set forth therein, shall be fully enforceable in accordance with the terms of the Purchase Agreement.

## ARTICLE II.
## ADMINISTRATIVE CLAIMS, PRIORITY CLAIMS, AND RESTRUCTURING EXPENSES

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Claims, Professional Fee Claims, Priority Tax Claims, and Receivables Program Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

*A. Administrative Claims.*

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Post-Effective Date Debtors, as applicable, each Holder of an Allowed Administrative Claim (other than Holders of DIP Claims, Professional Fee Claims, Receivables Program Claims, and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the Holders of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Post-Effective Date Debtors, as applicable; or (5) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Except as otherwise provided in this Article II.A of the Plan, requests for payment of Administrative Claims must be Filed with the Bankruptcy Court and served on the Debtors by the applicable Administrative Claims Bar Date. **Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date without the need for any objection from the Debtors or the Post-Effective Date Debtors, as applicable, or any notice to or action, order, or approval of the Bankruptcy Court or any other Entity.** Objections to such requests, if any, must be Filed with the Bankruptcy Court and served on the Debtors and the requesting party by the Claims Objection Deadline. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with the Bankruptcy Court with respect to an Administrative Claim previously Allowed.

*B. DIP Claims*.

On the Effective Date, except to the extent that a Holder of an Allowed DIP Claim agrees to alternative treatment, and in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Claim: (i) in the event of a Recapitalization Transaction, either (a) the DIP Loan giving rise to such Allowed DIP Claim shall be refinanced by means of a cashless settlement whereby such DIP Loan shall be converted on a dollar-for-dollar basis into New Takeback Facility Loans in accordance with the DIP Documents and the New Takeback Facility Documents, and all collateral that secures the Obligations (as defined in the DIP Credit Agreement) under the DIP Credit Agreement shall be reaffirmed, ratified, and shall automatically secure all obligations under the New Takeback Facility Documents, subject to the priorities of liens and payment set forth in the New Takeback Facility Documents, or (b) such DIP Claim shall be paid in full in Cash; or (ii) in the event of a Sale Transaction, Holders of the DIP Claims shall receive payment in full in Cash or, with the consent of Required Consenting Term Lenders and the Purchaser, such other treatment rendering Allowed DIP Clams Unimpaired in accordance with section 1124 of the Bankruptcy Code.

*C. Professional Fee Claims.*

1. Final Fee Applications and Payment of Professional Fee Claims.

All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. The Post-Effective Date Debtors shall pay Professional Fee Claims in Cash in the amount the Bankruptcy Court allows, including from funds held in the Professional Fee Escrow Account. The Post-Effective Date Debtors shall establish the Professional Fee Escrow Account in trust for the Professionals and fund such account with Cash equal to the Professional Fee Amount on the Effective Date.

2. Professional Fee Escrow Account.

On the Effective Date, the Post-Effective Date Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals. Such funds shall not be considered property of the Estates of the Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Post-Effective Date Debtors from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed. When all such Allowed amounts owing to Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be paid to the Post-Effective Date Debtors, without any further action or order of the Bankruptcy Court; *provided*, *however*, in the event of a Sale Transaction, any remaining amount in the professional Fee Escrow Account shall constitute Residual Cash and be distributable to Holders of Allowed First Lien Claims.

3. Professional Fee Amount.

Professionals shall reasonably estimate their unpaid Professional Fee Claims and other unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Effective Date and shall deliver such estimates to the Debtors no later than three (3) Business Days before the Effective Date; *provided*, *however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional's final request for payment of Filed Professional Fee Claims. If a Professional does not provide an estimate, the Debtors or the Post-Effective Date Debtors, as applicable, may estimate the unpaid and unbilled fees and expenses of such Professional.

4. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors. Upon the Confirmation Date, any requirement that Professionals comply with sections 327–331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Post-Effective Date Debtors, and/or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

*D. Priority Tax Claims.*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall receive Cash equal to the full amount of its Claim or such other treatment in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

*E. Payment of Restructuring Expenses.*

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date, shall be paid in full in Cash on the Effective Date or as reasonably practicable thereafter (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to, the terms set forth herein and in the RSA, without any requirement to File a fee application with the Bankruptcy Court, without the need for itemized time detail, and without any requirement for Bankruptcy Court review or approval. All Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date, and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Effective Date; *provided*, *however*, that such estimates shall not be considered an admission or limitation with respect to such Restructuring Expenses. On the Effective Date, invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. In addition, the Debtors and the Post-Effective Date Debtors (as applicable) shall continue to pay, when due and payable in the ordinary course, Restructuring Expenses arising directly out of the implementation of the Plan and Consummation thereof without any requirement for review or approval by the Bankruptcy Court or for any party to File a fee application with the Bankruptcy Court.

*F. Receivables Program Claims.*

All Receivables Program Claims shall be Allowed Claims. On the Effective Date, unless otherwise agreed to by the Holder of a Receivables Program Claim, the Allowed Receivables Program Claims will be satisfied in full in Cash by the applicable Debtor or Post-Effective Date Debtor in accordance with the terms of the Receivables Program Documents. On the Effective Date, or as soon as reasonably practicable thereafter, all fees and expenses incurred by the advisors to the parties to the Receivables Program shall be paid in full in Cash to the extent required under the Final Receivables Program Order.

## ARTICLE III.
## CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

*A. Classification of Claims and Interests.*

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest, or any portion thereof, is classified in a particular Class only to the extent that any portion of such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims against and Interests in the Debtors pursuant to the Plan is as follows:

| Class | Claims and Interests | Status | Voting Rights |
|---|---|---|---|
| Class 1 | Other Secured Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| Class 2 | Other Priority Claims | Unimpaired | Not Entitled to Vote (Deemed to Accept) |
| Class 3 | First Lien Claims | Impaired | Entitled to Vote |
| Class 4 | General Unsecured Claims | Impaired | Entitled to Vote |
| Class 5 | Section 510 Claims | Impaired | Not Entitled to Vote (Deemed to Reject) |
| Class 6 | Intercompany Claims | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept) / Not Entitled to Vote (Deemed to Reject) |
| Class 7 | Intercompany Interests | Unimpaired / Impaired | Not Entitled to Vote (Deemed to Accept) / Not Entitled to Vote (Deemed to Reject) |

| Class | Claims and Interests | Status | Voting Rights |
|---|---|---|---|
| Class 8 | Existing Equity Interests | Impaired | Not Entitled to Vote (Deemed to Reject) |

*B. Treatment of Claims and Interests.*

Each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Post-Effective Date Debtors, and the Holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

1. Class 1 - Other Secured Claims

(a) *Classification*: Class 1 consists of any Other Secured Claims against any Debtor.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction of such Claim and, at the option of the Debtors and the Required Consenting Term Lenders and, in the event of an Asset Sale, consistent with the Purchase Agreement, either:

(i) payment in full in Cash of its Allowed Other Secured Claim;

(ii) Reinstatement of its Allowed Other Secured Claim pursuant to section 1124 of the Bankruptcy Code; or

(iii) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 1 is Unimpaired under the Plan. Holders of Allowed Claims in Class 1 are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

2. Class 2 - Other Priority Claims

(a) *Classification*: Class 2 consists of any Other Priority Claims against any Debtor.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment of its Allowed Claim, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such Allowed Other Priority Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, which, in the event of an Asset Sale, shall be consistent with the Purchase Agreement.

(c) *Voting*: Class 2 is Unimpaired under the Plan. Holders of Allowed Claims in Class 2 are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

3. Class 3 – First Lien Claims

(a) *Classification*: Class 3 consists of any First Lien Claims against any Debtor.

(b) *Allowance*: The First Lien Claims shall be Allowed in the aggregate principal amount of approximately $961,496,926, plus (i) any and all unpaid interest, fees, premiums, drawn amounts under letters of credit, and all other obligations, amounts, and expenses due and owing under the First Lien Credit Agreement or related documents (including post-petition interest at the default contract rate) as of the Effective Date and (ii) amounts on account of letters of credit issued under the First Lien Credit Agreement that are drawn after the Distribution Record Date.

(c) *Treatment*: On the Effective Date, each Holder of a First Lien Claim (or its designated Affiliate, managed fund or account, or other designee) shall receive, in full and final satisfaction of such Claim:

(i) in the event of a Recapitalization Transaction, its *pro rata* share of 100 percent of the New Common Stock, subject to dilution by the Management Incentive Plan; or

(ii) in the event of a Sale Transaction, its *pro rata* share of the Distributable Consideration (including, for the avoidance of doubt, the Residual Cash).

(d) *Voting*: Class 3 is Impaired under the Plan, and Holders of Allowed Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. Class 4 - General Unsecured Claims

(a) *Classification*: Class 4 consists of General Unsecured Claims.

(b) *Treatment*: Except to the extent that a Holder of a General Unsecured Claim agrees to less favorable treatment or such General Unsecured Claim has been paid prior to the Effective Date, each Holder of a General Unsecured Claim shall receive, in full and final satisfaction of such Claim, its *pro rata* share of the GUC Trust Net Assets.

(c) *Voting*: Class 4 is Impaired under the Plan, and Holders of Allowed Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. Class 5 - Section 510(b) Claims

(a) *Classification*: Class 5 consists of all Section 510(b) Claims.

(b) *Treatment*: On the Effective Date, all Section 510 Claims will be cancelled, released, discharged, and extinguished and will be of no further force or effect, and Holders of Section 510 Claims will not receive any distribution on account of such Section 510 Claims.

(c) *Voting*: Class 5 is Impaired under the Plan. Holders of Allowed Claims in Class 5 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

6. Class 6 - Intercompany Claims

(a) *Classification*: Class 6 consists of all Intercompany Claims.

(b) *Treatment*: Each Allowed Intercompany Claim shall be, at the option of the applicable Debtor or Post-Effective Date Debtor, with the consent of the Required Consenting Term Lenders (not to be unreasonably withheld), and, in the event of a Sale Transaction, in consultation with the Purchaser and consistent with the Purchase Agreement, either:

(i) Reinstated; or

(ii) canceled or released without any distribution on account of such Claim.

(c) *Voting*: Class 6 is Unimpaired if the Class 6 Claims are Reinstated or Impaired if the Class 6 Claims are cancelled. Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 - Intercompany Interests

(a) *Classification*: Class 7 consists of all Intercompany Interests.

(b) *Treatment*: On the Effective Date, Intercompany Interests shall be, at the election of the applicable Debtor or Post-Effective Date Debtor, with the consent of the Required Consenting Term Lenders (not to be unreasonably withheld), and, in the event of a Sale Transaction, in consultation with the Purchaser and consistent with the Purchase Agreement, either:

(i) Reinstated; or

(ii) canceled or released without any distribution on account of such Interests.

(c) *Voting*: Class 7 is Unimpaired if the Class 7 Interests are Reinstated or Impaired if the Class 8 Interests are cancelled. Holders of Class 7 Interests are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

8. Class 8 - Existing Equity Interests

(a) *Classification*: Class 8 consists of all Existing Equity Interests.

(b) *Treatment*: On the Effective Date, all Existing Equity Interests shall be cancelled, released, extinguished, and discharged and will be of no further force or effect. Holders of Interests shall receive no recovery or distribution on account of their Existing Equity Interests.

(c) *Voting*: Class 8 is Impaired under the Plan. Holders of Allowed Interests in Class 8 are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

*C. Special Provision Governing Unimpaired Claims.*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Post-Effective Date Debtors, as applicable, regarding any Unimpaired Claims, including all rights regarding legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

*D. Elimination of Vacant Classes.*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

*E. Voting Classes, Presumed Acceptance by Non-Voting Classes.*

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Holders of such Claims or Interests in such Class shall be deemed to have accepted the Plan.

*F. Intercompany Interests.*

To the extent Reinstated under the Plan, distributions on account of Intercompany Interests are not being received by Holders of such Intercompany Interests on account of their Intercompany Interests but for the purposes of administrative convenience, for the ultimate benefit of the Holders of New Common Stock, and in exchange for the agreement of the Debtors and/or the Post-Effective Date Debtors, as applicable, under the Plan to make certain distributions to the Holders of Allowed Claims.

*G. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. Subject to the consent rights set forth in the RSA and the Purchase Agreement, the Debtors reserve the right to modify the Plan in accordance with Article X of the Plan to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

*H. Controversy Concerning Impairment.*

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

*I. Subordinated Claims*.

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and their respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, and subject to the RSA, the Post-Effective Date Debtors reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

## ARTICLE IV.
## MEANS FOR IMPLEMENTATION OF THE PLAN

*A. General Settlement of Claims and Interests.*

To the greatest extent permissible under the Bankruptcy Code, and in consideration of the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan. To the greatest extent permissible under the Bankruptcy Code, the Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, and controversies, and entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and Holders of Claims and Interests. Subject to Article VI hereof, all distributions made to Holders of Allowed Claims and Allowed Interests (as applicable) in any Class are intended to be and shall be final.

*B. Restructuring Transactions.*

Before, on, and after the Effective Date, the Debtors or the Post-Effective Date Debtors, as applicable, shall consummate the Restructuring Transactions and may take all actions (which, for the avoidance of doubt, shall in each case be in form, substance, and structure reasonably acceptable to the Required Consenting Term Lenders and, solely with respect to items (i), (ii), (viii), and (ix), subject to the consent rights set forth in the Purchase Agreement in the event of a Sale Transaction) as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan, including, as applicable: (i) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, the Plan Supplement, the RSA, and the other Definitive Documents; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan, the Plan Supplement, the RSA, and the other Definitive Documents; (iii) the execution, delivery, and filing, if applicable, of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (iv) the execution and delivery of the New Takeback Facility Documents and entry into the New Takeback Facility; (v) the issuance and distribution of the New Common Stock as set forth in the Plan; (vi) the implementation of the Management Incentive Plan; (vii) the execution and delivery of the New Organizational Documents and any certificates or articles of incorporation, bylaws, or such other applicable formation documents (if any) of each Post-Effective Date Debtor (including all actions to be taken, undertakings to be made, obligations to be incurred, and fees and expenses to be paid by the Debtors and/or the Post-Effective Date Debtors, as applicable); (viii) the execution of a Purchase Agreement and consummation of a Sale Transaction in accordance therewith; (ix) such other transactions that, in the reasonable business judgment of the Debtors or the Post-Effective Date Debtors, as applicable, the Required Consenting Term Lenders (in the event of a Recapitalization Transaction), and the Purchaser (in the event of a Sale Transaction), are required to effectuate the Restructuring Transactions; and (x) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

The Confirmation Order shall and shall be deemed to, pursuant to sections 105, 363, 1123, and 1141 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Asset Sale in the event of an Asset Sale.

The Debtors shall pursue the Recapitalization Transaction unless the Debtors determine, with the consent of the Required Consenting Term Lenders, to pursue an Equity Investment Transaction or an Asset Sale.

*C. The Equity Investment Transaction or Recapitalization Transaction.*

If the Equity Investment Transaction or Recapitalization Transaction occurs, the following provisions shall govern.

1. The Post-Effective Date Debtors.

On the Effective Date, the New Board shall be established, and each Post-Effective Date Debtor shall adopt its New Organizational Documents. The Post-Effective Date Debtors shall be authorized to adopt any other agreements, documents, and instruments and to take any other actions contemplated under the Plan as necessary to consummate the Plan.

2. Sources of Consideration for Plan Distributions.

The Debtors shall fund or make distributions under the Plan, as applicable, with: (i) the issuance of New Takeback Facility Loans under the New Takeback Facility, (ii) the proceeds from the Equity Investment Transaction; (iii) the New Common Stock, (iv) the GUC Trust Net Assets, and (v) the Debtors' Cash on hand. Each distribution and issuance referred to in Article VI of the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance. The issuance, distribution, or authorization, as applicable, of certain Securities in connection with the Plan, including the New Common Stock, will be exempt from Securities Act registration, as described more fully in Article IV.C.6 below.

(a) The New Takeback Facility.

In the event of a Recapitalization Transaction, on the Effective Date, the Post-Effective Date Debtors shall enter into the New Takeback Facility Credit Agreement. Confirmation of the Plan shall be deemed approval of the New Takeback Facility and the New Takeback Facility Documents, as applicable, and all transactions contemplated thereby; all actions to be taken, undertakings to be made, and obligations to be incurred by the Post-Effective Date Debtors in connection therewith, including the payment of all fees, indemnities, expenses, and other payments provided for therein; and authorization for the Post-Effective Date Debtors to enter into and execute the New Takeback Facility Documents and such other documents as may be required to effectuate the treatment afforded by the New Takeback Facility. Execution of the New Takeback Facility Credit Agreement by the New Takeback Facility Agent shall be deemed to bind all Holders of DIP Claims as if each such Holder had executed the New Takeback Facility Credit Agreement with appropriate authorization.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the New Takeback Facility Documents (a) shall be deemed to be granted, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the New Takeback Facility Documents, (c) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the New Takeback Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Post-Effective Date Debtors and the Persons and Entities granted such Liens and security interests shall be authorized to make all filings and recordings and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, federal, or other law that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required) and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

(b) New Common Stock.

Reorganized Cyxtera shall be authorized to issue a certain number of shares of New Common Stock pursuant to its New Organizational Documents and any options or other equity awards, if any, reserved for the Management Incentive Plan. The issuance of the New Common Stock shall be authorized without the need for any further corporate action. On the Effective Date, the New Common Stock shall be issued and distributed pursuant to, and in accordance with, the Plan, and, in the event of an Equity Investment Transaction, the Purchase Agreement.

All of the shares of New Common Stock issued pursuant to the Plan and, if applicable, the Purchase Agreement shall be duly authorized, validly issued, fully paid, and non-assessable. Each distribution and issuance referred to in Article VI hereof shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, including the New Organizational Documents, which terms and conditions shall bind each Entity receiving such distribution or issuance. Any Entity's acceptance of New Common Stock shall be deemed to constitute its agreement to the New Organizational Documents, as the same may be amended or modified from time to time following the Effective Date in accordance with their terms, without the need for execution by any party thereto other than the applicable Post-Effective Date Debtor(s). The New Common Stock will not be registered under the Securities Act or on any national securities exchange as of the Effective Date.

3. Corporate Existence.

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate Entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which such Debtor is incorporated or formed and pursuant to the certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended under the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law). On or after the Effective Date, the respective certificate of incorporation and bylaws (or other formation documents) of one or more of the Post-Effective Date Debtors may be amended or modified on the terms therein without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. On or after the Effective Date, one or more of the Post-Effective Date Debtors may be disposed of, dissolved, wound down, or liquidated without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

4. Plan Implementation.

In the event of an Equity Investment Transaction, on the Effective Date, the Purchaser shall purchase substantially all of the New Common Stock free and clear of all Liens, Claims, Interests, charges, or other encumbrances in exchange for the Purchase Price set forth in the Purchase Agreement. The Confirmation Order shall authorize the Debtors, the Purchaser, and the Post-Effective Date Debtors, as applicable, to undertake the transactions contemplated by the Purchase Agreement, including pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(a)(5)(D) of the Bankruptcy Code.

The Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Equity Investment Transaction pursuant to the terms of the Purchase Agreement and the Plan. On and after the Effective Date, except as otherwise provided in the Plan, the Post-Effective Date Debtors may operate their businesses and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; *provided*, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

5. New Organizational Documents.

On or immediately prior to the Effective Date, the New Organizational Documents shall be adopted or amended as may be necessary to effectuate the transactions contemplated by the Plan. To the extent required under the Plan or applicable non-bankruptcy law, each of the Post-Effective Date Debtors will file its New Organizational Documents with the applicable Secretaries of State and/or other applicable authorities in its respective state, province, or country of incorporation in accordance with the corporate laws of the respective state, province, or country of incorporation to the extent such filing is required for each such document. The New Organizational Documents will prohibit the issuance of non-voting Equity Securities to the extent required under section 1123(a)(6) of the Bankruptcy Code. For the avoidance of doubt, the New Organizational Documents shall be included as exhibits to the Plan Supplement. After the Effective Date, each Post-Effective Date Debtor may amend and restate its constituent and governing documents as permitted by the laws of its jurisdiction of formation and the terms of such documents, and the Post-Effective Date Debtors may file such amended certificates or articles of incorporation, bylaws, or other applicable formation and constituent documents as permitted by the laws of the applicable states, provinces, or countries of incorporation and the New Organizational Documents. For the avoidance of doubt, any claimant's acceptance of the New Common Stock shall be deemed to constitute its agreement to be bound by the New Organizational Documents without the need for execution by any party other than the Post-Effective Date Debtors.

6. Certain Securities Law Matters.

Pursuant to section 1145 of the Bankruptcy Code, or, to the extent that section 1145 of the Bankruptcy Code is either not permitted or not applicable, section 4(a)(2) of the Securities Act, Regulation D promulgated thereunder, Regulation S under the Securities Act, and/or other available exemptions from registration, the offering, issuance, and distribution of the New Common Stock as contemplated herein shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. federal, state, or local laws requiring registration prior to the offering, issuance, distribution, or sale of securities.

The shares of New Common Stock to be issued under the Plan on account of Allowed Claims in accordance with, and pursuant to, section 1145 of the Bankruptcy Code will be freely transferable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; and (b) any restrictions on the transferability of such New Common Stock in the New Organizational Documents.

The shares of New Common Stock that may be issued pursuant to the exemption from registration set forth in section 4(a)(2) of the Securities Act, Regulation D promulgated thereunder, Regulation S under the Securities Act, and/or other available exemptions from registration will be considered "restricted securities," will bear customary legends and transfer restrictions, and may not be transferred except pursuant to an effective registration statement or under an available exemption from the registration requirements of the Securities Act.

7. Management Incentive Plan.

On or as soon as reasonably practicable following the Effective Date, the Post-Effective Date Debtors shall adopt and implement the Management Incentive Plan, which will provide that up to 10% of the value of the New Common Stock as of the Effective Date, on a fully diluted basis, shall be issued in connection with the Management Incentive Plan on terms acceptable to the Required Consenting Term Lenders and the Debtors and, in the event of an Equity Investment Transaction, the Purchaser. The issuance of any awards under the Management Incentive Plan shall be at the discretion of the New Board.

8. Employment Obligations.

Unless otherwise provided herein, and subject to Article V of the Plan, if applicable, all employee wages, compensation, retiree benefits (as defined in 11 U.S.C. § 1114(a) of the Bankruptcy Code), and benefit programs in

place as of the Effective Date with the Debtors shall be assumed by the Post-Effective Date Debtors and shall remain in place as of the Effective Date, and the Post-Effective Date Debtors will continue to honor such agreements, arrangements, programs, and plans as of the Effective Date. For the avoidance of doubt, pursuant to section 1129(a)(13) of the Bankruptcy Code, as of the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law. On the Effective Date, the Post-Effective Date Debtors shall (a) assume all employment agreements, indemnification agreements, or other agreements entered into with current employees; or (b) enter into new agreements with such employees on terms and conditions acceptable to the Post-Effective Date Debtors, such employee, and the Required Consenting Term Lenders and, in the event of an Equity Investment Transaction, the Purchaser.

*D. The Asset Sale.*

If the Asset Sale occurs, the following provisions shall govern.

1. The Asset Sale.

On the Effective Date, the Debtors shall consummate the Sale Transaction contemplated by the Purchase Agreement. Following the discharge of the Debtors pursuant to Section 1141 of the Bankruptcy Code and as set forth in this Plan and the Confirmation Order, the Acquired Assets shall, to the extent set forth in the Purchase Agreement, be transferred to and vest in the Purchaser free and clear of all Liens, Claims, Interests, charges, or other encumbrances (except for those Liens, Claims, Interests, charges, or other encumbrances expressly assumed by the Purchaser pursuant to the terms of the Purchase Agreement) in exchange for the Purchase Price as set forth in the Purchase Agreement. The Confirmation Order shall authorize the Debtors, the Post-Effective Date Debtors, and the Purchaser, as applicable, to undertake the transactions contemplated by the Purchase Agreement, including pursuant to sections 105, 363, 365, 1123(a)(5)(B), 1123(a)(5)(D), 1123(b)(4), 1141(b), and 1141(c) of the Bankruptcy Code. From and after the Effective Date, except as expressly set forth in the Purchase Agreement, neither the Purchaser nor any of its affiliates shall be liable for any Claims, Administrative Claims, or other liabilities of the Debtors or the Post-Effective Date Debtors, which shall be payable solely in accordance with this Plan and from the proceeds of the Asset Sale and the other assets of the Debtors or Post-Effective Date Debtors, as applicable, that do not constitute Assumed Liabilities (as defined in the Purchase Agreement) or that were not otherwise transferred or assigned to the Purchaser or any of its affiliates pursuant to the Purchase Agreement.

Subject to the consent rights set forth in the RSA, the Debtors and Purchaser shall be authorized to take all actions as may be deemed necessary or appropriate to consummate the Asset Sale pursuant to the terms of the Purchase Agreement and the Plan, as well as to execute, deliver, file, record, and issue any note, documents, or agreements in connection therewith, without further notice to or order of the Bankruptcy Court; act or action under applicable law, regulation, order, rule; or the vote, consent, authorization, or approval of any Entity. Upon entry of the Confirmation Order by the Bankruptcy Court, all matters provided for under the Sale Transaction and the Plan, and any documents in connection therewith, shall be deemed authorized and approved without any requirement of further act or action by the Debtors. On and after the Effective Date, except as otherwise provided in the Plan, the Post-Effective Date Debtors or the Purchaser, as applicable, may operate their businesses and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules; *provided*, that the Bankruptcy Court shall retain jurisdiction to resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with any of the foregoing.

2. Sources of Consideration for Plan Distributions.

The Debtors shall fund distributions under the Plan with: (i) the proceeds from the Asset Sale, (ii) the GUC Trust Net Assets, (iii) the Debtors' Cash on hand, and (iv) the proceeds of any Causes of Action retained by the Post-Effective Date Debtors. Each distribution and issuance referred to in Article VI of the Plan shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments or other documents evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

3. Post-Effective Date Debtors.

On and after the Effective Date, the Post-Effective Date Debtors shall continue in existence for purposes of (i) winding down the Debtors' business and affairs as expeditiously as reasonably possible as authorized by the Bankruptcy Court; (ii) resolving Disputed Claims; (iii) making distributions on account of Allowed Claims as provided hereunder; (iv) establishing and funding the Distribution Reserve Accounts; (v) enforcing and prosecuting claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith; (vi) filing appropriate tax returns; (vii) complying with any continuing obligations under the Purchase Agreement; and (viii) administering the Plan in an efficacious manner. The Post-Effective Date Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (x) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (y) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

Notwithstanding anything to the contrary in the Plan, on the Effective Date, any Cause of Action not settled, released, discharged, enjoined, or exculpated under the Plan or transferred pursuant to the Purchase Agreement on or prior to the Effective Date shall vest in the Post-Effective Date Debtors and shall be subject to administration by the Plan Administrator, and the net proceeds thereof shall be Distributable Consideration.

4. Plan Administrator.

On the Effective Date, the authority, power, and incumbency of the persons acting as managers, directors, and officers of the Post-Effective Date Debtors shall be deemed to have resigned, solely in their capacities as such, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Post-Effective Date Debtors and shall succeed to the powers of the Post-Effective Date Debtors' managers, directors, and officers. The Plan Administrator shall act for the Post-Effective Date Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under the Plan in accordance with the Wind Down and as otherwise provided in the Confirmation Order.

From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtors. The foregoing shall not limit the authority of the Post-Effective Date Debtors or the Plan Administrator, as applicable, to continue the employment of any former manager or officer. The Debtors, after the Confirmation Date, and the Post-Effective Date Debtors or Plan Administrator, after the Effective Date, shall be permitted to make payments to employees pursuant to employment programs then in effect, and, in the reasonable business judgment of the Plan Administrator and upon three (3) Business Days' notice to counsel to the AHG, to implement additional employee programs and make payments thereunder solely as necessary to effectuate the Wind Down, without any further notice to or action, order, or approval of the Bankruptcy Court.

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Distribution Reserve Accounts and wind down the business and affairs of the Debtors and Post-Effective Date Debtors, including: (i) making distributions under the Plan; *provided* that, prior to making final distributions as contemplated herein and until all letters of credit issued under the First Lien Credit Agreement are replaced and cancelled, are drawn, or expire pursuant to their terms, the Plan Administrator or the Disbursing Agent, at the election of the Debtors or the Post-Effective Date Debtors, as applicable, shall reserve an amount of Distributable Consideration or New Common Stock, as applicable, on account of the Undrawn LC Facility Claims equal to the incremental distributions to which such Holders of First Lien Claims would be entitled if all undrawn letters of credit issued under the First Lien Credit Agreement were drawn and funded as contemplated therein (the "Undrawn LC Facility Claims Reserve"); (ii) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Post-Effective Date Debtors in accordance with the Wind-Down Reserve; (iii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iv) making distributions from the Distribution Reserve Accounts as contemplated under the Plan; (v) establishing

and maintaining bank accounts in the name of the Post-Effective Date Debtors; (vi) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (vii) paying all reasonable fees, expenses, debts, charges, and liabilities of the Post-Effective Date Debtors; (viii) except as otherwise provided for herein, enforcing and prosecuting claims, interests, rights, and privileges under the Causes of Action on the Schedule of Retained Causes of Action in accordance with Article IV.E; (ix) administering and paying taxes of the Post-Effective Date Debtors, including filing tax returns; (x) representing the interests of the Post-Effective Date Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; (xi) in the event of a Sale Transaction, discharging the Sellers' and the Post-Effective Date Debtors' Post-Effective Date obligations under the Purchaser Agreement; and (xii) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, the Confirmation Order, or any applicable orders of the Bankruptcy Court or as the Plan Administrator reasonably deems to be necessary and proper to carry out the provisions of the Plan in accordance with the Wind-Down Reserve.

To the extent that undrawn letters of credit issued under the First Lien Credit Agreement are drawn after the Distribution Record Date, such Undrawn LC Facility Claims, if any, shall be satisfied from the Undrawn LC Facility Claims Reserve. The Plan Administrator shall hold in the Undrawn LC Facility Claims Reserve all dividends, payments, and other distributions made on account of, as well as any obligations arising from, the property held in the Undrawn LC Facility Claims Reserve, to the extent that such property continues to be so held at the time such distributions are made or such obligations arise. For the avoidance of doubt, the foregoing shall not affect distributions to holders of First Lien Claims on account of drawn letters of credit as of the Distribution Record Date.

(a) Retention of Professionals.

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, at the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties for the Post-Effective Date Debtors. The reasonable fees and expenses of such professionals, if applicable, shall be paid from the Wind-Down Reserve upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Post-Effective Date Debtors' retained professionals shall be made in the ordinary course of business from the Wind-Down Reserve and shall not be subject to the approval of the Bankruptcy Court.

(b) Compensation of the Plan Administrator.

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement, reasonably acceptable to the Required Consenting Term Lenders, and paid out of the Wind-Down Reserve. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator's duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash from the Wind-Down Reserve if such amounts relate to any actions taken hereunder.

(c) Plan Administrator Expenses.

All costs, expenses, and obligations incurred by the Plan Administrator or the Post-Effective Date Debtors in administering the Plan or in effecting distributions thereunder (including the reimbursement of reasonable expenses), including any costs, expenses, or obligations in any manner connected, incidental, or related thereto, shall be paid from the Wind-Down Reserve.

The Debtors and the Plan Administrator, as applicable, shall not be required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court. However, in the event that the Plan Administrator is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Reserve.

(d) Exculpation, Indemnification, Insurance, and Liability Limitation.

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Post-Effective Date Debtors. The Plan Administrator may obtain, at the expense of the Post-Effective Date Debtors and with funds from the Wind-Down Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Post-Effective Date Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

(e) Tax Returns.

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors and, pursuant to section 505 of the Bankruptcy Code and subject to applicable law, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate.

(f) Dissolution of the Post-Effective Date Debtors.

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made, completion of all of its duties under the Plan and the Purchase Agreement, and entry of a final decree closing the last of the Chapter 11 Cases, the Post-Effective Date Debtors shall be deemed to be dissolved without any further action by the Post-Effective Date Debtors, including the filing of any documents with the secretary of state for the state in which each Post-Effective Date Debtor is formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Post-Effective Date Debtors in and withdraw the Post-Effective Date Debtors from applicable state(s).

To the extent the Debtors have any Cash or other property remaining after the Chapter 11 Cases have been closed, such Cash or other property shall constitute Residual Cash and shall be immediately allocated and distributable to the Holders of Allowed First Lien Claims.

5. Wind Down.

As soon as practicable after the Effective Date, the Plan Administrator shall: (i) cause the Debtors and the Post-Effective Date Debtors, as applicable, to comply with and abide by the terms of the Purchase Agreement and any other documents contemplated thereby; (ii) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of one or more of the Debtors or the Post-Effective Date Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (iii) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Plan Administrator without the need for any action or approval by the shareholders or board of directors or managers of any Debtor. From and after the Effective Date, except with respect to Post-Effective Date Debtors as set forth herein, the Debtors (x) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (y) shall be deemed to have canceled pursuant to the Plan all Existing Equity Interests, and (z) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

*E. Preservation of Causes of Action.*

In accordance with section 1123(b) of the Bankruptcy Code, but subject in all respects to Article VIII hereof and, in the event of a Sale Transaction, the Purchase Agreement and any related documents and schedules, the Post-Effective Date Debtors, shall retain and may enforce (or the Plan Administrator may enforce, if applicable) all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, and the rights of the Post-Effective Date Debtors to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action (i) acquired by the Purchaser in accordance with the Purchase Agreement, as applicable, or (ii) released or exculpated herein (including, without limitation, by the Debtors) pursuant to the releases and exculpations contained in the Plan, including in Article VIII hereof, which shall be deemed released and waived by the Debtors and the Post-Effective Date Debtors, as applicable, as of the Effective Date.

The Post-Effective Date Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Post-Effective Date Debtors. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Post-Effective Date Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors and the Post-Effective Date Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as may be assigned or transferred to the Purchaser in accordance with the Purchase Agreement or as otherwise expressly provided in the Plan, including Article VIII of the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Post-Effective Date Debtors expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. For the avoidance of doubt, the GUC Trust shall be solely responsible for effectuating all distributions on account of General Unsecured Claims, and the Plan Administrator, if applicable, shall have no responsibility therefor. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the corresponding Post-Effective Date Debtor except as otherwise expressly provided in the Plan, including Article VIII of the Plan. The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, through their authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Post-Effective Date Debtors and/or the Plan Administrator, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Article IV.E include any Claim or Cause of Action against a Released Party or Exculpated Party.

*F. Cancellation of Existing Agreements and Interests.*

On the Effective Date, except with respect to the New Takeback Facility or to the extent otherwise provided in the Plan, including in Article V.A hereof, all notes, instruments, certificates, and other documents evidencing Claims or Interests, including the First Lien Credit Documents and all other credit agreements and indentures, shall be cancelled, and the obligations of the Debtors and any non-Debtor Affiliate thereunder or in any way related thereto, including any Liens and/or claims in connection therewith, shall be deemed satisfied in full, cancelled, discharged, released, and of no force or effect, and the Agents shall be released from all duties and obligations thereunder. Holders of or parties to such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to the Plan. Notwithstanding the foregoing or anything to the contrary herein, any rights of each Agent to indemnification and participation by the other lenders in letters of credit

under the DIP Documents, the Receivables Program Documents, the First Lien Credit Documents, and the Bridge Facility Documents shall remain binding and enforceable in accordance with the terms of such documents; *provided* that any such rights to indemnification shall remain binding and enforceable only as against the Post-Effective Date Debtors and shall not (i) be subject to discharge, impairment, or release under the Plan or the Confirmation Order or (ii) be asserted against the Purchaser, any of its Affiliates, or their respective property or assets, including any Acquired Entity (as defined in the Purchase Agreement).

*G. Section 1146 Exemption.*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Post-Effective Date Debtor, as applicable, or to or from any other Person) of property under the Plan or pursuant to: (i) the issuance, Reinstatement, distribution, transfer, or exchange of any debt, Equity Security, or other interest in the Debtors or the Post-Effective Date Debtors, as applicable; (ii) the Restructuring Transactions; (iii) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iv) the making, assignment, or recording of any lease or sublease; (v) the grant of collateral as security for the New Takeback Facility; (vi) the Sale Transaction and any agreement, acquisition, or transaction entered into by the Purchaser or any of its affiliates in connection with the Sale Transaction or in furtherance thereof, including any acquisitions of real or personal property by the Purchaser or its affiliates from one or more of the Debtors' creditors or landlords in connection with consummation of the Sale Transaction or from other parties in connection with the closing of the Sale Transaction and/or integral to the financing thereof; or (vii) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax, fee, or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax, fee, or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146 of the Bankruptcy Code, shall forego the collection of any such tax, fee, or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, fee, or governmental assessment.

*H. Corporate Action.*

Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, including, as and if applicable: (i) selection of the directors, officers, or managers for the Post-Effective Date Debtors; (ii) the issuance and distribution of the New Common Stock; (iii) implementation of the Restructuring Transactions; (iv) entry into the New Takeback Facility Documents; (v) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date); (vi) adoption of the New Organizational Documents; (vii) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (viii) adoption by the New Board of the Management Incentive Plan; (ix) consummation of the Sale Transaction pursuant to the Purchase Agreement and related documents; (x) formation of the Post-Effective Date Debtors and selection of the Plan Administrator; and (xi) all other acts or actions contemplated or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions contemplated by the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Post-Effective Date Debtors and any corporate action required by the Debtors or the Post-Effective Date Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security Holders, directors, officers, or managers of the Debtors or the Post-Effective Date Debtors. On or prior to the Effective Date, as applicable, the appropriate officers of the Debtors or the Post-Effective Date Debtors, as applicable, shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Post-Effective Date Debtors, including, in the event of a Recapitalization

Transaction or an Equity Investment Transaction, the New Common Stock, the New Organizational Documents, the New Takeback Facility, the New Takeback Facility Documents, any other Definitive Documents, and any and all other agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Article IV.H shall be effective notwithstanding any requirements under non-bankruptcy law.

*I. Directors and Officers of the Post-Effective Date Debtors.*

As of the Effective Date, the term of the current members of the board of directors or other Governing Body of Cyxtera shall expire. In the event of a Recapitalization Transaction or an Equity Investment Transaction, the members for the initial term of the New Board shall be appointed; *provided*, that the disinterested directors of Cyxtera, comprising the special committee of Cyxtera's board of directors, shall retain authority following the Effective Date with respect to matters relating to Professional Fee Claim requests by Professionals acting at their authority and direction in accordance with the terms of the Plan. The disinterested directors of Cyxtera shall not have any of their privileged and confidential documents, communications, or information transferred (or deemed transferred) to the Post-Effective Date Debtors, the Purchaser, or any other Entity without their prior written consent.

The initial members of the New Board, if applicable, will be identified in the Plan Supplement to the extent known at the time of filing. In the event of a Recapitalization Transaction or an Equity Investment Transaction, each such member and officer of the Post-Effective Date Debtors shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Post-Effective Date Debtors. The members of the New Board shall be chosen by the Debtors or the Post-Effective Date Debtors, subject to the applicable terms of the RSA and, if applicable, the Purchase Agreement.

*J. Effectuating Documents; Further Transactions.*

On and after the Effective Date, the Post-Effective Date Debtors and their respective officers and boards of directors and managers are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan in the name of and on behalf of the Post-Effective Date Debtors without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

*K. Vesting of Assets in the Post-Effective Date Debtors.*

Except as otherwise provided in the Plan, the Confirmation Order, the Purchase Agreement, or any agreement, instrument, or other document incorporated herein, or entered into in connection with or pursuant to, the Plan, the Plan Supplement, or the New Takeback Facility Documents, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan (other than the GUC Trust Assets) shall vest in each respective Post-Effective Date Debtor, free and clear of all Liens, Claims, charges, Causes of Action, or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, the Confirmation Order, the Purchase Agreement, or any agreement, instrument, or other document incorporated herein, each Post-Effective Date Debtor may operate its business and use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

*L. Private Company.*

The Post-Effective Date Debtors shall not have any class of Equity Securities listed on a national securities exchange and shall make commercially reasonable efforts to take the steps necessary to be a private company without Securities Act or Exchange Act reporting obligations upon emergence or as soon as practicable thereafter in accordance with and to the extent permitted by the Securities Act and the Exchange Act.

*M. GUC Trust.*

1. General Terms.

On the Effective Date, the Debtors and the GUC Trustee shall enter into the GUC Trust Agreement and the GUC Trust Assets shall vest or deem to be vested in the GUC Trust automatically without further action by any Person, free and clear of all Claims and Liens, and such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The GUC Trust shall be administered by the GUC Trustee and governed by the GUC Trust Agreement and shall have the sole power and authority to distribute the GUC Trust Net Assets to Holders of Allowed General Unsecured Claims in accordance with the treatment set forth in the Plan for Class 4. The GUC Trust Agreement may include reasonable and customary provisions that allow for indemnification by the GUC Trust and the GUC Trustee.

The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement and shall include the responsibility and requisite power to reconcile General Unsecured Claims, including asserting any objections thereto. From and after the Effective Date, the GUC Trustee, on behalf of the GUC Trust, shall, in the ordinary course of business and without the need for any approval by the Bankruptcy Court, pay the GUC Trust Fees and Expenses from the GUC Trust Assets. The Debtors, the Post-Effective Date Debtors, and their Affiliates (and anyone acting on their behalf) shall not be responsible for any costs, fees, or expenses of the GUC Trust. The GUC Trustee and the GUC Trust shall be discharged or dissolved, as the case may be, at the later of (i) such time as all distributions required to be made by the GUC Trustee under the Plan have been made, and (ii) the fifth anniversary of the Effective Date (unless extended by order of the Bankruptcy Court).

2. Tax Treatment.

In furtherance of this section of the Plan, (i) it is intended that the GUC Trust be classified for U.S. federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d) and in compliance with Revenue Procedure 94-45, 1994-2 C.B. 684, and, thus, as a "grantor trust" within the meaning of sections 671 through 679 of the Internal Revenue Code to the Holders of General Unsecured Claims, consistent with the terms of the Plan, and accordingly, all assets held by the GUC Trust are intended to be deemed for United States federal income tax purposes to have been distributed by the Debtors or the Post-Effective Date Debtors, as applicable, to the Holders of Allowed General Unsecured Claims, and then contributed by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for their interest in the GUC Trust; (ii) the primary purpose of the GUC Trust shall be the liquidation and distribution of the GUC Trust Net Assets in accordance with Treasury Regulation section 301.7701-4(d), including the resolution of General Unsecured Claims in accordance with this Plan, with no objective to continue or engage in the conduct of a trade or business; (iii) all parties (including, without limitation, the Debtors, the Post-Effective Date Debtors, the Estates, Holders of Allowed General Unsecured Claims receiving interests in the GUC Trust, and the GUC Trustee) shall report consistently with such treatment described in provisos (i) and (ii) of this paragraph; (iv) all parties (including, without limitation, the Debtors, the Estates, Holders of Allowed General Unsecured Claims receiving interests in the GUC Trust, and the GUC Trustee) shall report consistently with the valuation of the GUC Trust Assets transferred to the GUC Trust as determined by the GUC Trustee (or its designee); (v) the GUC Trustee shall be responsible for filing all applicable tax returns for the GUC Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a); and (vi) the GUC Trustee shall annually send to each Holder of an interest in the GUC Trust a separate statement regarding the receipts and expenditures of the trust as relevant for United States federal income tax purposes.

Subject to definitive guidance from the United States Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the GUC Trustee of a private letter ruling if the GUC Trustee so requests one, or the receipt of an adverse determination by the United States Internal Revenue Service upon audit if not contested by the GUC Trustee), the GUC Trustee may timely elect to (i) treat any portion of the GUC Trust allocable to Disputed Claims as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 (and make any appropriate elections) and (ii) to the extent permitted by applicable law, report consistently with the foregoing for United States state and local income tax purposes. If a "disputed ownership fund" election is made, all parties (including, without limitation, the Debtors, the Estates, Holders of Allowed General Unsecured Claims

receiving interests in the GUC Trust, and the GUC Trustee) shall report for United States federal, state, and local income tax purposes consistently with the foregoing. Any taxes (including with respect to earned interest, if any) imposed on the GUC Trust as a result of this treatment shall be paid out of the assets of the GUC Trust (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes). The GUC Trustee may request an expedited determination of taxes of the GUC Trust, including any reserve for Disputed Claims, under section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the GUC Trust for all taxable periods through the dissolution of the GUC Trust.

The GUC Trust shall continue to have all of the rights and powers granted to the GUC Trust as set forth in this Plan and applicable non-bankruptcy law, and the GUC Trustee shall also have the rights, powers, and obligations set forth in the GUC Trust Agreement.

3. Transfer of GUC Trust Interests.

Any and all interests in the GUC Trust shall be transferrable either (i) with the consent of the Post-Effective Date Debtors or, (ii) by will, intestate succession, or otherwise by operation of law. In addition, any and all interests in the GUC Trust will not constitute "securities" and will not be registered pursuant to the Securities Act or any applicable state or local securities law. However, if it should be determined that any such interests constitute "securities," the exemption provisions of Section 1145 of the Bankruptcy Code will be satisfied, and the offer, issuance, and distribution under the Plan of interests in the GUC Trust will be exempt from registration under the Securities Act and all applicable state and local securities laws and regulations.

*N. Director and Officer Liability Insurance.*

After the Effective Date, none of the Post-Effective Date Debtors shall terminate or otherwise reduce the coverage under any of the D&O Liability Insurance Policies (including any "tail policy") in effect on or after the Petition Date, with respect to conduct or events occurring prior to the Effective Date, and all directors and officers of the Debtors who served in such capacity at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy, to the extent set forth therein, regardless of whether such directors and officers remain in such positions after the Effective Date. For the avoidance of doubt, in the event of an Asset Sale, the D&O Liability Insurance Policies will not be assumed and assigned to the Purchaser, and any obligations in connection therewith shall not be enforceable against the Purchaser.

## ARTICLE V.
## TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

*A. Assumption of Executory Contracts and Unexpired Leases.*

On the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, each Executory Contract or Unexpired Lease not previously rejected, assumed, or assumed and assigned shall (i) in the event of an Equity Investment Transaction or a Recapitalization Transaction, be deemed assumed or assumed and assigned, as applicable; or (ii) in the event of an Asset Sale, be (a) assumed or assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement, as applicable, if it is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement if it is not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and does not relate exclusively to Excluded Assets or Excluded Liabilities; or (c) rejected if it is (x) listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or (y) not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and relates exclusively to Excluded Assets or Excluded Liabilities. For the avoidance of doubt, the foregoing shall not affect any Executory Contract or Unexpired Lease that is (i) explicitly designated by the Plan or the Confirmation Order to be assumed or assumed and assigned, as applicable, in connection with the Confirmation of the Plan; (ii) subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (iii) a D&O Liability Insurance Policy; or (iv) a contract, instrument, release, indenture, or other agreement or document entered

into in connection with the Plan. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all assumptions, assumptions and assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided for in the Plan, the Plan Supplement, the Purchase Agreement (in the event of a Sale Transaction), and the Confirmation Order, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. In the event of a Sale Transaction, each Executory Contract and Unexpired Lease assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement shall vest in and be fully enforceable by the Purchaser or the applicable designee in accordance with its terms, except as modified by the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption and assignment.

Except as otherwise provided herein or agreed to by the Debtors, the Purchaser (in the event of a Sale Transaction), and the applicable counterparty, each assumed (or assumed and assigned) Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Notwithstanding anything to the contrary in the Plan, the Debtors, the Post-Effective Date Debtors, and/or the Plan Administrator, as applicable, and with the consent of the Purchaser (in the event of an Asset Sale), reserve the right to alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases and the Schedule of Rejected Executory Contracts and Unexpired Leases at any time through and including ten (10) days before the Effective Date; *provided* that, following the Effective Date and solely in the event of an Asset Sale, the Plan Administrator or Purchaser may supplement the Schedule of Assumed Executory Contracts and Unexpired Leases at any time in accordance with the Purchase Agreement, including the notice and consent rights set forth therein; *provided further* that in the event of a Recapitalization Transaction, such alteration, amendment, modification, or supplement shall be subject to the consent rights set forth in the RSA, and in the event of a Sale Transaction, such alteration, amendment, modification, or supplement shall be subject to the consent rights set forth in the Purchase Agreement.

*B. Indemnification Obligations.*

Consistent with applicable law, all indemnification provisions in place as of the Effective Date (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, D&O Liability Insurance Policies, or otherwise) for current and former members of any Governing Body, directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors, as applicable, shall (i) not be discharged, impaired, or otherwise affected in any way, including by the Plan, the Plan Supplement, or the Confirmation Order; (ii) remain intact, in full force and effect, and irrevocable; (iii) not be limited, reduced, or terminated after the Effective Date; and (iv) survive the effectiveness of the Plan on terms no less favorable to such current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors than the indemnification provisions in place prior to the Effective Date irrespective of whether such indemnification obligation is owed for an act or event occurring before, on, or after the Petition Date. All such obligations shall be deemed and treated as Executory Contracts to be assumed by the Debtors under the Plan and shall continue as obligations of the Post-Effective Date Debtors and/or the Plan Administrator, as applicable. For the avoidance of doubt, if the Asset Sale is consummated, no such obligations shall be enforceable against the Purchaser or any of its affiliates.

*C. Claims Based on Rejection of Executory Contracts or Unexpired Leases.*

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejection, if any, of any Executory Contracts or Unexpired Leases as provided for in the Plan, the Schedule of Rejected Executory Contracts and Unexpired Leases, or the Purchase Agreement in the event of a Sale Transaction, as applicable. Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Claims and Noticing Agent at the address specified in any notice of entry of the Confirmation Order and served on the Post-Effective Date Debtors no later than thirty (30) days after the effective date of such rejection. The notice of the Plan Supplement shall be deemed appropriate notice of rejection when served on applicable parties.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease with respect to which a Proof of Claims is not Filed with the Claims and Noticing Agent within thirty (30) days after the effective date of such rejection will be automatically disallowed and forever barred from assertion and shall not be enforceable against the Debtors, the Post-Effective Date Debtors, the Estates, the GUC Trust, the Purchaser, the Plan Administrator, or their property without the need for any objection by the Debtors, the Post-Effective Date Debtors, the Plan Administrator, the Purchaser, or the GUC Trust, as applicable, or further notice to, action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged and shall be subject to the permanent injunction set forth in Article VIII.F of the Plan, notwithstanding anything in a Proof of Claim to the contrary.**

All Claims arising from the rejection by any Debtor of any Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code shall be treated as a General Unsecured Claim as set forth in Article III.B of the Plan and may be objected to in accordance with the provisions of Article VII of the Plan and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

*D. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.*

The Debtors or the Post-Effective Date Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as reasonably practicable thereafter. The proposed amount and timing of payment of each such Cure shall be set forth in the Plan Supplement unless otherwise agreed in writing (email being sufficient) between the Debtors or the Post-Effective Date Debtors and the counterparty to the applicable Executory Contract or Unexpired Lease. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection (an "Executory Contract Objection") filed by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or assumption and assignment, including pursuant to the Plan, or related Cure amount must be Filed, served, and actually received by counsel to the Debtors and the U.S. Trustee by the applicable Assumption or Rejection Objection Deadline or any other deadline that may be set by the Bankruptcy Court. Any Executory Contract Objection (x) timely Filed prior to the Confirmation Hearing will be heard by the Bankruptcy Court at the Confirmation Hearing unless otherwise agreed to by the Debtors and the objecting party, with the consent of the Purchaser (in the case of an Asset Sale), or (y) timely Filed after the Confirmation Hearing shall be heard as soon as reasonably practicable on a date requested by the Debtors or the Post-Effective Date Debtors, as the case may be, with the consent of the Purchaser (in the event of an Asset Sale). Any Executory Contract Objection that is not timely Filed shall be disallowed and forever barred, estopped, and enjoined from assertion and shall not be enforceable against the Purchaser or any Post-Effective Date Debtor without the need for any objection by the Post-Effective Date Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Post-Effective Date Debtors, as applicable, of the Cure amount; *provided* that nothing herein shall prevent the Post-Effective Date Debtors from paying any Cure amount despite the failure of the relevant counterparty to File an Executory Contract Objection. The Debtors or the Post-Effective Date Debtors, as applicable, may also settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or assumption and assignment of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption and/or assignment.

If there is any dispute regarding any Cure, the ability of the Post-Effective Date Debtors, or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption (or assumption and assignment), then payment of Cure shall occur as soon as reasonably practicable after entry of a Final Order (which may be the Confirmation Order) resolving such dispute, approving such assumption (and, if applicable, assumption and assignment), or as may be agreed upon by the Debtors or the Post-Effective Date Debtors, the Purchaser, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

To the extent an Executory Contract Objection relates solely to a Cure, the Debtors or the Post-Effective Date Debtors, as applicable, may assume and/or assume and assign the applicable Executory Contract or Unexpired Lease prior to the resolution of the Cure objection; *provided* that the Debtors or the Post-Effective Date Debtors, as applicable, reserve Cash in an amount sufficient to pay the full amount reasonably asserted as the required Cure payment by the non-Debtor party to such Executory Contract or Unexpired Lease (or such smaller amount as may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor party and the applicable Post-Effective Date Debtor); *provided* further that any Cash reserved in accordance with the forgoing shall not constitute an Acquired Asset and shall be maintained by the Debtors or the Post-Effective Date Debtors, as applicable.

Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease pursuant to the Plan, the Purchase Agreement, or otherwise and full payment of any applicable Cure pursuant to this Article V.D shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. **Any Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed (or assumed and assigned) in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure has been fully paid pursuant to this Article V.D, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court**.

For the avoidance of doubt, if the Asset Sale is consummated pursuant to the Purchase Agreement, the Purchaser shall not have any obligation with respect to any Cure. To the extent any Cure dispute arises after the Effective Date with respect to an Executory Contract or Unexpired Lease assumed and assigned to the Purchaser, the resolution of such Cure dispute shall be the sole responsibility of the Debtors or the Post-Effective Date Debtors, and the Purchaser shall have no liability in connection therewith.

*E. Insurance Policies.*

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. If the Debtors consummate the Equity Investment Transaction or the Recapitalization Transaction, unless otherwise provided in the Plan, on the Effective Date, (i) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims, including all D&O Liability Insurance Policies and (ii) such insurance policies and any agreements, documents, or instruments relating thereto, including all D&O Liability Insurance Policies, shall revest in the Post-Effective Date Debtors.

If the Debtors consummate the Asset Sale, unless otherwise provided in the Plan or Purchase Agreement, on the Effective Date, (i) each of the Debtors' insurance policies (excluding all D&O Liability Insurance Policies) shall be assumed and assigned to the Purchaser in accordance with the Purchase Agreement and (ii) each of the Debtors' D&O Liability Insurance Policies shall be assumed by the Debtors and shall revest in the Post-Effective Date Debtors.

Nothing in the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any other order of the Bankruptcy Court (including any other provision that purports to be preemptory or supervening), (i) alters, modifies, or otherwise amends the terms and conditions of (or the coverage provided by) any of such insurance policies or (ii) alters or modifies the duty, if any, that the insurers or third party administrators pay claims

covered by such insurance policies and their right to seek payment or reimbursement from the Debtors (or after the Effective Date, the Post-Effective Date Debtors) or draw on any collateral or security therefor.

*F. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases.*

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Post-Effective Date Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors and the Post-Effective Date Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations with respect to goods previously purchased by the Debtors pursuant to rejected Executory Contracts or Unexpired Leases.

*G. Reservation of Rights.*

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Debtors or the Post-Effective Date Debtors have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Post-Effective Date Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan.

*H. Nonoccurrence of Effective Date.*

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

*I. Contracts and Leases Entered Into After the Petition Date.*

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtors or the Post-Effective Date Debtors liable thereunder in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

## ARTICLE VI.
## PROVISIONS GOVERNING DISTRIBUTIONS

*A. Timing and Calculation of Amounts to Be Distributed.*

Unless otherwise provided in the Plan, on the Effective Date (or, if a Claim or Interest is not an Allowed Claim or Allowed Interest on the Effective Date, on the date that such Claim or Interest becomes an Allowed Claim or Allowed Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Allowed Interest shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Interests (as applicable) in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article VII hereof. Except as otherwise provided in the Plan, Holders of Claims of Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. For the avoidance of doubt, distributions on account of General Unsecured Claims shall be governed by the GUC Trust Agreement.

*B. Disbursing Agent.*

All distributions under the Plan shall be made by the Disbursing Agent or the GUC Trustee, as applicable, on the Effective Date or at such other time as provided for in the Plan. The Disbursing Agent and the GUC Trustee shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent or the GUC Trustee is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Post-Effective Date Debtors or the GUC Trust, respectively.

*C. Rights and Powers of Disbursing Agent.*

1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby (other than distributions on account of General Unsecured Claims); (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred on or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes), and any reasonable compensation and expense reimbursement claims (including reasonable attorney fees and expenses), made by the Disbursing Agent shall be paid in Cash by the Post-Effective Date Debtors.

*D. Delivery of Distributions and Undeliverable or Unclaimed Distributions.*

1. Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

2. Delivery of Distributions in General.

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims or Allowed Interests shall be made to Holders of record as of the Distribution Record Date by the Disbursing Agent or the GUC Trustee, as appropriate: (a) to the signatory set forth on any Proof of Claim or Proof of Interest filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim or Proof of Interest is filed or if the Debtors or the GUC Trust have not been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Post-Effective Date Debtors, or the Disbursing Agent or the GUC Trustee, as appropriate, after the date of any related Proof of Claim or Proof of Interest; or (c) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Subject to this Article VI, distributions under the Plan on account of Allowed Claims or Allowed Interests shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim or Allowed Interest shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtors, the Post-Effective Date Debtors, the Disbursing Agent, and the GUC Trustee, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for fraud, gross negligence, or willful misconduct. For the avoidance of doubt, distributions on account of General Unsecured Claims shall be governed by the GUC Trust Agreement.

3. Minimum Distributions.

No fractional shares of New Common Stock shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an Allowed Claim or Allowed Interest (as applicable) would otherwise result in the issuance of a number of shares of New Common Stock that is not a whole number, the actual distribution of shares of New Common Stock shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number, and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized shares of New Common Stock to be distributed under the Plan shall be adjusted as necessary to account for the foregoing rounding.

4. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder of Allowed Claims or Allowed Interests (as applicable) is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent or the GUC Trustee has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Post-Effective Date Debtors, the Plan Administrator, or the GUC Trust (in the case of distributions from the GUC Trust Net Assets), as applicable, automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheatment, abandoned property, or unclaimed property laws to the contrary), and the Claim or Interest of any Holder related to such property or interest in property shall be discharged and forever barred. The Post-Effective Date Debtors, the Disbursing Agent, and the GUC Trust shall have no obligation to attempt to locate any Holder of an Allowed Claim other than by reviewing the Debtors' books and records and the Bankruptcy Court's filings. For the avoidance of doubt, treatment of undeliverable distributions on account of General Unsecured Claims shall be governed by the GUC Trust Agreement.

*E. Manner of Payment.*

At the option of the Disbursing Agent or the GUC Trustee, as applicable, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in the GUC Trust Agreement or other applicable agreements.

*F. Compliance with Tax Requirements.*

In connection with the Plan, to the extent applicable, any applicable withholding or reporting agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, any applicable withholding or reporting agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors, the Post-Effective Date Debtors, and the GUC Trust reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances in a tax-efficient manner acceptable to the Required Consenting Term Lenders.

*G. Allocations.*

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

*H. No Postpetition Interest on Claims.*

Unless otherwise specifically provided for in the Plan, the DIP Orders, or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against the Debtors shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

*I. Foreign Currency Exchange Rate.*

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal (National Edition)*, on the Effective Date.

*J. Setoffs and Recoupment.*

Except as expressly provided in the Plan, each Post-Effective Date Debtor may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan Distributions to be made on account of any Allowed Claim, any and all claims, rights, and Causes of Action that such Post-Effective Date Debtor may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (i) agreed in amount among the relevant Post-Effective Date Debtor(s) and Holder of Allowed Claim or (ii) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided* that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Post-Effective Date Debtor or its successor of any and all claims, rights, and Causes of Action that such Post-Effective Date Debtor or its successor may possess against the applicable Holder. In no event shall any Holder of Claims against, or Interests in, the Debtors be entitled to recoup any such Claim or Interest against any claim, right, or Cause of Action of the Debtors or the Post-Effective Date Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Article XII.G of the Plan on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

*K. Claims Paid or Payable by Third Parties.*

1. Claims Paid by Third Parties.

The Debtors, the Post-Effective Date Debtors, and the GUC Trust, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, a Post-Effective Date Debtor, or the GUC Trust, as applicable. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor, a Post-Effective Date Debtor, or the GUC Trust, as applicable, on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the applicable Post-Effective Date Debtor or the GUC Trust (in the case of distributions from the GUC Trust Assets), as applicable, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder timely to repay or return such distribution shall result in the Holder owing the applicable Post-Effective Date Debtor or the GUC Trust (in the case of distributions from the GUC Trust Assets) annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen (14) day grace period specified above until the amount is fully repaid.

2. Claims Payable by Third Parties.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies.

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything to the contrary contained herein (including Article III of the Plan), nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers, under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

## ARTICLE VII.
## PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

*A. Disputed Claims Process*.

The Debtors and the Post-Effective Date Debtors, and the GUC Trust (solely with respect to General Unsecured Claims), shall have the exclusive authority to (i) determine, without the need for notice to or action, order, or approval of the Bankruptcy Court, that a claim subject to any Proof of Claim that is Filed is Allowed and (ii) file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under the Plan. **Except as otherwise provided herein, all Proofs of Claim Filed after the earlier of: (a) the Effective Date or (b) the applicable claims bar date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Debtor, Post-Effective Date Debtor, or the GUC Trust, as applicable, without the need for any objection by the Debtor, Post-Effective Date Debtor, or the GUC Trust, as applicable, or any further notice to or action, order, or approval of the Bankruptcy Court.**

*B. Allowance of Claims.*

After the Effective Date and subject to the terms of the Plan and the Purchase Agreement (in the event of an Asset Sale), the Plan Administrator, each of the Post-Effective Date Debtors, the GUC Trust, or the Purchaser (solely to the extent that the assets or liabilities that give rise to such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement in the event of a Sale Transaction), as applicable, shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately prior to the Effective Date. The Debtors may affirmatively determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Allowed Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest.

Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, or that is not or has not been Allowed by the Plan or a Final Order is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court.

*C. Estimation of Claims.*

Before or after the Effective Date, the Debtors, the Post-Effective Date Debtors, the Plan Administrator, or the GUC Trust (with respect to General Unsecured Claims), as applicable, and, in the event of a Sale Transaction, with the consent of the Purchaser solely to the extent that the assets or liabilities that give rise to such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim or Interest, including during the litigation of any objection to any Disputed Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Disputed Claim or Interest that has been expunged from the Claims Register but that either is subject to appeal or has not been the subject of a Final Order shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors, the Post-Effective Date Debtors, the Plan Administrator, or the GUC Trust (with respect to General Unsecured Claims), as applicable, and, in the event of a Sale Transaction, with the consent of the Purchaser solely to the extent that the assets or liabilities that give rise to such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen (14) days after the date on which such Disputed Claim or Interest is estimated.

*D. Claims Administration Responsibilities.*

Except as otherwise specifically provided in the Plan, after the Effective Date, the Post-Effective Date Debtors, the Plan Administrator, and/or the GUC Trust (solely with respect to the General Unsecured Claims), as applicable, and, in the event of a Sale Transaction, with the consent of the Purchaser solely to the extent that such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement, shall have the sole authority: (i) to File, withdraw, or litigate to judgment, objections to Claims or Interests; (ii) to settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (iii) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, each Post-Effective Date Debtor or the GUC Trust, as applicable, shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to the Plan.

*E. Time to File Objections to Claims.*

Any objections to Claims shall be Filed by the Post-Effective Date Debtors or the GUC Trust, and, in the event of an Asset Sale, with the consent of the Purchaser solely to the extent that such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement, on or before the Claims Objection Deadline, as such deadline may be extended from time to time.

*F. Adjustment to Claims or Interests without Objection.*

Any duplicate Claim or Interest or any Claim or Interest that has been paid, satisfied, amended, or superseded may be adjusted or expunged on the Claims Register by the Post-Effective Date Debtors, the Plan Administrator, and/or the GUC Trust (with respect to General Unsecured Claims), as applicable, without the Post-Effective Date Debtors, the Plan Administrator, or the GUC Trust, as applicable having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

*G. Disputed and Contingent Claims Reserve.*

On or after the Effective Date, the Debtors or the Post-Effective Date Debtors, as applicable, may establish one or more reserves for Claims that are contingent or have not yet been Allowed, in an amount or amounts as reasonably determined by the applicable Debtors, the Post-Effective Date Debtors, or the Plan Administrator, as applicable, consistent with the Proof of Claim Filed by the applicable Holder of such Disputed Claim. Following the final resolution of all Disputed Claims, any residual amounts in the Disputed Claims Reserve shall constitute Residual Cash and be immediately distributable to Holders of Allowed First Lien Claims.

*H. Disallowance of Claims or Interests.*

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Post-Effective Date Debtors, as applicable, allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims or Interests may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Post-Effective Date Debtors. All Claims Filed on account of an indemnification obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan after notice to the Holder of such Claim, but without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as provided herein or otherwise agreed to by the Post-Effective Date Debtors or the GUC Trust (with respect to the General Unsecured Claims), in their sole discretion, any and all Proofs of Claim Filed after the applicable bar date shall be deemed Disallowed as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order.

*I. Amendments to Proofs of Claim or Interest.*

On or after the Effective Date, a Proof of Claim or Proof of Interest may not be Filed or amended without the prior authorization of the Bankruptcy Court, the Debtors, the Post-Effective Date Debtors, the Plan Administrator, the GUC Trust (with respect to General Unsecured Claims), or the Purchaser (solely to the extent that the assets or liabilities that give rise to such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement in the event of a Sale Transaction), as applicable, and any such new or amended Proof of Claim or Proof of Interest Filed that is not so authorized before it is Filed shall be deemed Disallowed in full and expunged without any further action, order, or approval of the Bankruptcy Court absent prior Bankruptcy Court approval or agreement by the Debtors, the Post-Effective Date Debtors, the Plan Administrator, or the Purchaser (solely to the extent that the assets or liabilities that give rise to such Claim or Interest are transferred to the Purchaser pursuant to the Purchase Agreement in the event of a Sale Transaction) as applicable; *provided* that the foregoing shall not apply to Administrative Claims or claims filed by Governmental Units to the extent the applicable bar date has not yet occurred.

*J. Distributions Pending Allowance.*

Notwithstanding any other provision of the Plan, if any portion of a Claim or Interest is a Disputed Claim or Interest, as applicable, no payment or distribution provided under the Plan shall be made on account of such Claim or Interest unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest.

*K. Distributions After Allowance.*

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim or Allowed Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Allowed Interest (as applicable) in

accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Interest becomes a Final Order, the Disbursing Agent (or the GUC Trustee, with respect to General Unsecured Claims) shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim or Interest unless required under applicable bankruptcy law.

## ARTICLE VIII.
## SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

*A. Discharge of Claims and Termination of Interests.*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the Confirmation Order, or in any contract, instrument, or other agreement or document created or entered into pursuant to the Plan, including the Purchase Agreement in the event of an Asset Sale, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Post-Effective Date Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims or Interests, including demands, liabilities, and Causes of Action (including any Causes of Action or Claims based on theories or allegations of successor liability) that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (iii) the Holder of such a Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims (other than any Reinstated Claims) and Interests (other than any Intercompany Interests that are Reinstated) and in the event of an Asset Sale, the transfer of the Debtors' assets free and clear of any and all such Claims and Interests, subject to the occurrence of the Effective Date.

***B. Release of Liens.***

**Except as otherwise provided in the New Takeback Facility Documents, the Plan, the Confirmation Order, the Purchase Agreement (if applicable), or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim or any related claim that may be asserted against a non-Debtor Affiliate, in satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III.B.1 hereof, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates or any non-Debtor Affiliate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Post-Effective Date Debtors and their successors and assigns. Any Holder of such Secured Claim or claim against a non-Debtor Affiliate (and the applicable agents for such Holder) shall be authorized and directed, at the sole cost and expense of the Post-Effective Date Debtors, to release any collateral or other property of any Debtor or non-Debtor Affiliate (including any Cash Collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder) and to take such actions as may be reasonably requested by the Post-Effective Date Debtors or the Plan Administrator, as applicable, to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.**

***C. Releases by the Debtors.***

**Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged, by and on behalf of the Debtors, their Estates, and, if applicable, the Post-Effective Date Debtors and the Plan Administrator, in each case on behalf of itself and its respective successors, assigns, and representatives and any and all other Persons that may purport to assert any Cause of Action derivatively, by or through the foregoing Persons, from any and all claims and Causes of Action whatsoever (including any Avoidance Actions and any derivative claims asserted or assertable on behalf of the Debtors, their Estates, the Post-Effective Date Debtors, or the Plan Administrator), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Debtors, their Estates, the Post-Effective Date Debtors, if applicable, the Plan Administrator, if applicable, or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Estates, the Chapter 11 Cases, the Restructuring Transactions, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated under the Plan, the business or contractual arrangements or interactions between the Debtors and any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the RSA, the Restructuring Transactions, the First Lien Credit Documents, the Bridge Facility Documents, the New Organizational Documents, the DIP Documents, the DIP Orders, the Disclosure Statement, the Plan Supplement, the Purchase Agreement (if applicable), the Sale Transaction (if applicable), the Plan and related agreements, instruments, and other documents, the solicitation of votes with respect to the Plan, the New Takeback Facility Documents, the New Organizational Documents, the Receivables Program Documents, and all other Definitive Documents, in all cases based upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided*, *however*, that notwithstanding anything herein to the contrary, nothing in this Plan shall affect, limit, or release in any way any performance obligations of any party or Entity under the Plan, the Asset Sale, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or the Asset Sale (including the Purchase Agreement and any documents in connection therewith).**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan and, further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan; (ii) a good faith settlement and compromise of the Claims released by the Debtor Release; (iii) in the best interests of the Debtors and all Holders of Claims and Interests; (iv) fair, equitable, and reasonable; (v) given and made after due notice and opportunity for hearing; and (vi) a bar to any of the Debtors, the Debtors' Estates, or, if applicable, the Post-Effective Date Debtors or the Plan Administrator, asserting any Claim or Cause of Action released pursuant to the Debtor Release.**

***D. Releases by Holders of Claims and Interests.***

**Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged, by the Releasing Parties, in each case on behalf of itself and its respective successors, assigns, and representatives and any and all other Persons that may purport to assert any Cause of Action derivatively, by or through the foregoing Persons, in each case solely to the extent of the Releasing**

**Parties' authority to bind any of the foregoing, including pursuant to agreement or applicable non-bankruptcy law, from any and all claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors or the Estates), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, that such Holders or their estates, Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or the Estates, the Chapter 11 Cases, the Restructuring Transactions, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated under the Plan, the business or contractual arrangements or interactions between the Debtors and any Released Party, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the RSA, the Restructuring Transactions, the First Lien Credit Documents, the Bridge Facility Documents, the New Organizational Documents, the DIP Documents, the DIP Orders, the Disclosure Statement, the Plan Supplement, the Purchase Agreement (if applicable), the Sale Transaction (if applicable), the Plan and related agreements, instruments, and other documents, the solicitation of votes with respect to the Plan, the New Takeback Facility Documents, the New Organizational Documents, the Receivables Program Documents, and all other Definitive Documents, in all cases based upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; *provided*, *however*, that notwithstanding anything herein to the contrary, nothing in this Plan shall affect, limit, or release in any way any performance obligations of any party or Entity under the Plan, the Asset Sale, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or the Asset Sale (including the Purchase Agreement and any documents in connection therewith).**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (i) consensual; (ii) essential to the confirmation of the Plan; (iii) given in exchange for good and valuable consideration provided by the Released Parties; (iv) a good faith settlement and compromise of the Claims released by the Third-Party Release; (v) in the best interests of the Debtors and their Estates; (vi) fair, equitable, and reasonable; (vii) given and made after due notice and opportunity for hearing; and (viii) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the Third-Party Release.**

***E. Exculpation.***

**To the fullest extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party will be released and exculpated from, any Claim or Cause of Action arising prior to the Effective Date in connection with or arising out of the administration of the Chapter 11 Cases, the negotiation and pursuit of the RSA, the Restructuring Transactions, the First Lien Credit Documents, the Bridge Facility Documents, the New Organizational Documents, the DIP Documents, the DIP Orders, the Disclosure Statement, the Plan Supplement, the Purchase Agreement (if applicable), the Sale Transaction (if applicable), the Plan and related agreements, instruments, and other documents, the New Takeback Facility Documents, the Receivables Program Documents, and all other Definitive Documents, the solicitation of votes for, or Confirmation of, the Plan, the funding of the Plan, the occurrence of the Effective Date, the administration of the Plan or the property to be distributed under the Plan, the issuance of securities under or in connection with the Plan, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Post-Effective Date Debtors, if applicable, in connection with the Plan and the Restructuring Transactions, or the transactions in furtherance of any of the foregoing, other than Claims or Causes of Action in each case arising out of or related to any act or omission of an Exculpated Party that is a criminal act or constitutes actual fraud, willful misconduct, or gross negligence as determined by a Final Order, but in all respects such**

**Persons will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of securities pursuant to the Plan and, therefore, are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan, including the issuance of securities thereunder. The exculpation will be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability; *provided*, however, that notwithstanding anything herein to the contrary, nothing in this Plan shall affect, limit, or release in any way any performance obligations of any party or Entity under the Plan, the Asset Sale, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or the Asset Sale (including the Purchase Agreement and any documents in connection therewith).**

***F. Injunction.***

**Except as otherwise expressly provided in the Plan or the Confirmation Order or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date through and until the date upon which all remaining property of the Debtors' Estates vested in the Post-Effective Date Debtors has been liquidated and distributed in accordance with the terms of the Plan, from taking any of the following actions against, as applicable, the Debtors, the Post-Effective Date Debtors, the Exculpated Parties, or the Released Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, Causes of Action, or liabilities; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action, or liabilities; (iii) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action, or liabilities; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action, or liabilities unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, Causes of Action, or liabilities released or settled pursuant to the Plan.**

**No Person or Entity may commence or pursue a Claim or Cause of Action of any kind against the Debtors, the Post-Effective Date Debtors, the Exculpated Parties, or the Released Parties, as applicable, that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action subject to Article VIII.C, Article VIII.D, or Article VIII.E hereof, without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim of any kind, and (ii) specifically authorizing such Person or Entity to bring such Claim or Cause of Action against any such Debtor, Post-Effective Date Debtor, Exculpated Party, or Released Party.**

**Upon entry of the Confirmation Order, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Except as otherwise set forth in the Confirmation Order, each Holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in this Article VIII.F.**

*G. Protections Against Discriminatory Treatment.*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Post-Effective Date Debtors, or 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 the Post-Effective Date Debtors, or another Entity with whom the Post-Effective Date Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

*H. Document Retention.*

On and after the Effective Date, the Post-Effective Date Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Post-Effective Date Debtors, and in accordance with the Purchase Agreement (if applicable).

*I. Reimbursement or Contribution.*

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (i) such Claim has been adjudicated as non-contingent or (ii) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

## ARTICLE IX.
## CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

*A. Conditions Precedent to the Effective Date.*

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

1. the Restructuring Transactions shall have been implemented in accordance with the Restructuring Transactions Memorandum in all material respects;

2. in the event of an Asset Sale, the Distribution Reserve Accounts shall have been established and funded with the Priority Claims Reserve Amount and the Wind-Down Amount;

3. the Bankruptcy Court shall have entered the Confirmation Order and the Confirmation Order shall have become a Final Order;

4. each document or agreement constituting the applicable Definitive Documents, the form and substance of which shall be subject to the consent rights set forth in the RSA (and, in the event of a Sale Transaction, shall be subject to the consent rights set forth in the Purchase Agreement or shall otherwise be in form and substance reasonably acceptable to the Purchaser), shall have been executed and/or effectuated and remain in full force and effect, and any conditions precedent related thereto or contained therein shall have been satisfied or waived by the applicable party or parties prior to or contemporaneously with the occurrence of the Effective Date;

5. the New Takeback Facility Documents, if applicable, the form and substance of which shall be subject to the consent rights set forth in the RSA, shall have been executed and delivered by each party thereto, and any conditions precedent related thereto shall have been satisfied or waived by the parties thereto (with the consent of the Required Consenting Term Lenders), other than such conditions that relate to the effectiveness of the Plan and related transactions, including payment of fees and expenses;

6. the DIP Claims shall have been indefeasibly paid in full in Cash or, solely to the extent set forth herein, satisfied by the New Takeback Facility;

7. unless an Asset Sale occurs, the New Common Stock shall have been issued;

8. all Restructuring Expenses, to the extent invoiced, shall have been paid in full;

9. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan and the Restructuring Transactions;

10. if and as applicable, the Purchase Agreement shall (i) have been executed and all conditions precedent to closing of the Sale Transaction shall have occurred, been waived in accordance with the Purchase Agreement, or will occur substantially simultaneously with the effectiveness of the Plan and (ii) be in full force and effect and binding upon the relevant parties according to its terms;

11. if and as applicable, the Purchaser shall deliver the Purchase Price to the Debtors in exchange for the Post-Effective Date Debtors' distribution of the substantially all of the New Common Stock or transfer of substantially all of the Debtors' assets or as otherwise agreed to by the Debtors and the Purchaser;

12. the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been Filed;

13. the RSA shall remain in full force and effect;

14. the GUC Trust Agreement shall have been executed and the GUC Trust Assets shall have vested or be deemed to have vested in the GUC Trust;

15. none of the Chapter 11 Cases shall have been converted to a case under chapter 7 of the Bankruptcy Code;

16. no Bankruptcy Court order appointing a trustee or examiner with expanded powers shall have been entered and remain in effect under any chapter of the Bankruptcy Code with respect to the Debtors;

17. the Plan shall not have been materially amended, altered, or modified from the Plan as confirmed by the Confirmation Order, unless such material amendment, alteration, or modification has been made in accordance with the terms of the Plan as confirmed by the Confirmation Order, the RSA, and, in the event of an Asset Sale, the Purchase Agreement; and

18. all professional fees and expenses of retained professionals required to be approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such fees and expenses after the Effective Date shall have been placed in the Professional Fee Escrow Account pending approval by the Bankruptcy Court.

*B. Waiver of Conditions.*

The conditions to the Effective Date set forth in this Article IX, except for the conditions set forth in Article IX.A.6 and 17 of the Plan (each of which may not be waived without the consent of the affected parties), may be waived in whole or in part at any time by the Debtors only with the prior written consent (email shall suffice) of the Required Consenting Term Lenders and, in the event of a Sale Transaction, the Purchaser, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

*C. Effect of Failure of Conditions.*

If Consummation does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by the Debtors or other Claims or Interests; (ii) prejudice in any manner the rights of the Debtors, any Holders of Claims or Interests, or any

other Entity; or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders of Claims or Interests, or any other Entity in any respect; *provided* that all provisions of the RSA or the Purchase Agreement that survive termination thereof shall remain in effect in each case, in accordance with the terms thereof.

*D. Substantial Consummation.*

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

## ARTICLE X.
## MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

*A. Modification and Amendments.*

Except as otherwise specifically provided in the Plan and only to the extent permitted by the RSA, and in the event of a Sale Transaction, only to the extent permitted by the Purchase Agreement and subject to the consent rights set forth in the Purchase Agreement, the Debtors reserve the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to those restrictions on modifications set forth in the Plan, the RSA, and in the event of a Sale Transaction, the Purchase Agreement and the consent rights set forth therein, and the requirements of section 1127 of the Bankruptcy Code, rule 3019 of the Bankruptcy Rules, and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, each of the Debtors expressly reserves its respective rights to revoke or withdraw, or to alter, amend, or modify, the Plan with respect to such Debtor, one or more times, after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

*B. Effect of Confirmation on Modifications.*

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

*C. Revocation or Withdrawal of Plan.*

To the extent permitted by the RSA and, in the event of a Sale Transaction, only to the extent permitted by the Purchase Agreement and subject to the Purchase Agreement in all respects (including Article VIII and Section 10.12 thereof), the Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to File subsequent plans of reorganization. Subject to the Purchase Agreement (including Article VIII and Section 10.12 thereof), if the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or Interests, (b) prejudice in any manner the rights of such Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity.

## ARTICLE XI.
## RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating

to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Post-Effective Date Debtors' amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed, assumed and assigned, or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. grant any consensual request to extend the deadline for assuming or rejecting Executory Contracts and Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

5. ensure that distributions to Holders of Allowed Claims and Allowed Interests (as applicable) are accomplished pursuant to the provisions of the Plan;

6. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

7. adjudicate, decide, or resolve any and all matters related to sections 1141 and 1145 of the Bankruptcy Code;

8. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of the Plan, the Sale Transaction (as applicable), and all contracts, instruments, releases, indentures, and other agreements or documents created or entered into in connection with the Plan, the Sale Transaction (as applicable), or the Disclosure Statement;

9. enforce the terms of the Purchase Agreement and any related documents or schedules thereto (if applicable) and enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

11. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of the Plan;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, discharges, and exculpations contained in the Plan, including under Article VIII hereof, whether arising prior to or after the Effective Date, and enter such orders as may be necessary or appropriate to implement such releases, injunctions, exculpations, and other provisions;

13. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.K hereof;

14. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan, the Plan Supplement, or the Disclosure Statement, including the RSA, and the Purchase Agreement (if applicable);

16. enter an order concluding or closing the Chapter 11 Cases;

17. adjudicate any and all disputes arising from or relating to distributions under the Plan;

18. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements (including the Purchase Agreement, if applicable), documents, or instruments executed in connection with the Plan;

21. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

22. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in the Plan, including under Article VIII hereof;

23. enforce all orders previously entered by the Bankruptcy Court; and

24. hear any other matter not inconsistent with the Bankruptcy Code.

As of the Effective Date, notwithstanding anything in this Article XI to the contrary, the New Takeback Facility Documents shall be governed by the jurisdictional provisions therein, and the Bankruptcy Court shall not retain any jurisdiction with respect thereto.

## ARTICLE XII.
## MISCELLANEOUS PROVISIONS

*A. Immediate Binding Effect.*

Subject to Article IX.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan (including, for the avoidance of doubt, the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon the Debtors, the Post-Effective Date Debtors, the Purchaser (if applicable), and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

*B. Additional Documents.*

On or before the Effective Date, and consistent in all respects with the terms of the RSA, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary to effectuate and further evidence the terms and conditions of the Plan and the RSA. The Debtors or the Post-Effective Date Debtors, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

*C. Payment of Statutory Fees.*

All fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Post-Effective Date Debtors, (or funded by the Post-Effective Date Debtors and disbursed by the Disbursing Agent on behalf of each of the Post-Effective Date Debtors and the GUC Trustee) for each quarter (including any fraction thereof) until such Post-Effective Date Debtor's Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.

*D. Statutory Committee and Cessation of Fee and Expense Payment.*

On the Effective Date, the Committee and any other statutory committee appointed in these Chapter 11 Cases shall dissolve, and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases. The Post-Effective Date Debtors shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to any statutory committees after the Effective Date.

All monthly reports shall be filed, and all fees due and payable pursuant to section 1930(a) of Title 28 of the United States Code shall be paid by the Debtors or the Post-Effective Date Debtors, as applicable, (or funded by the Post-Effective Date Debtors and disbursed by the Disbursing Agent on behalf of each of the Post-Effective Date Debtors and the GUC Trustee) on the Effective Date, and following the Effective Date, the Post-Effective Date Debtors (or the Disbursing Agent on behalf of each of the Post-Effective Date Debtors) shall pay such fees as they are assessed and come due for each quarter (including any fraction thereof) and shall file quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each Debtor shall remain obligated to pay such quarterly fees to the U.S. Trustee and to file quarterly reports until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

*E. Reservation of Rights.*

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

*F. Successors and Assigns.*

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign, Affiliate, officer, manager, director, agent, representative, attorney, beneficiaries, or guardian, if any, of such Entity.

*G. Notices.*

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to the Debtors, to:

Cyxtera Technologies, Inc.
Attention: Victor Semah, Chief Legal Counsel
E-mail address: victor.semah@cyxtera.com
with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Edward O. Sassower, Christopher Marcus, Derek I. Hunter
E-mail addresses: esassower@kirkland.com
christopher.marcus@kirkland.com
derek.hunter@kirkland.com

2. if to a member of the AHG, to:

Gibson, Dunn & Crutcher LLP
200 Park Ave
New York, NY 10166
Attention: Scott J. Greenberg, Steven Domanowski, Stephen D. Silverman
E-mail addresses: sgreenberg@gibsondunn.com,
sdomanowski@gibsondunn.com
ssilverman@gibsondunn.com

3. if to a Consenting Sponsor, to:

Latham & Watkins LLP
1271 6th Avenue
New York, NY 10020
Attention: George A. Davis, Joseph C. Celentino
E-mail addresses: george.davis@lw.com,
joe.celentino@lw.com

4. if to the Committee, to:

Pachulsky Stang Ziehl & Jones LLP
780 Third Avenue
New York, NY 10017
Attention: Bradford J. Sandler, Robert J. Feinstein, Paul J. Labov
E-mail addresses: bsandler@pszjlaw.com,
rfeinstein@pszjlaw.com
plabov@pszjlaw.com

5. if to the Purchaser, to:

c/o Brookfield Asset Management Inc.
250 Vesey Street, 15th Floor
New York, New York 10281
Attention: Fred Day, Michael Rudnick
E-mail addresses: fred.day@brookfield.com
michael.rudnick@brookfield.com

with copies to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Brian S. Hermann, Jacob A. Adlerstein
E-mail addresses: bhermann@paulweiss.com
jadlerstein@paulweiss.com

After the Effective Date, the Debtors have authority to notify Entities that, in order to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

*H. Term of Injunctions or Stays.*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

*I. Entire Agreement.*

Except as otherwise indicated, including with respect to the Purchase Agreement (if applicable), and without limiting the effectiveness of the RSA, the Plan (including, for the avoidance of doubt, the Plan Supplement) supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

*J. Exhibits.*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at https://www.kccllc.net/cyxtera or the Bankruptcy Court's website at www.txs.uscourts.gov/bankruptcy. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

*K. Nonseverability of Plan Provisions.*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and

provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan, and any deletion or modification thereof shall be subject to the consent rights set forth in the RSA, the Purchase Agreement (if applicable), and herein; and (iii) nonseverable and mutually dependent.

*L. Votes Solicited in Good Faith.*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys shall be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties nor individuals nor the Post-Effective Date Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan or any previous plan.

*M. Good Faith; No Collusion.*

In the event of an Asset Sale, upon entry of the Confirmation Order, the Debtors and the Purchaser, and each of their management, board of directors or equivalent governing body, officers, directors, employees, agents, members, managers, equity holders, and representatives will be found and deemed to have negotiated, proposed, and entered into the Purchase Agreement in good faith, without collusion or fraud, and from arms'-length bargaining positions.

*N. Closing of Chapter 11 Cases.*

The Post-Effective Date Debtors shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

*O. Waiver or Estoppel.*

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, the RSA, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

*P. Creditor Default.*

An act or omission by a Holder of a Claim or Interest or the Purchaser in contravention of the provisions of the Plan shall be deemed an event of default under the Plan. Upon an event of default, the Post-Effective Date Debtors may seek to hold the defaulting party in contempt of the Confirmation Order and shall be entitled to reasonable attorneys' fees and costs of the Post-Effective Date Debtors in remedying such default. Upon the finding of such a default by a Holder of a Claim or Interest, the Bankruptcy Court may: (a) designate a party to appear, sign, and/or accept the documents required under the Plan on behalf of the defaulting party, in accordance with Bankruptcy Rule 7070; (b) enforce the Plan by order of specific performance; (c) award a judgment against such defaulting Holder of a Claim or Interest in favor of the Post-Effective Date Debtors in an amount, including interest, if applicable, to compensate the Post-Effective Date Debtors for the damages caused by such default; and (d) make such other order as may be equitable that does not materially alter the terms of the Plan.

*Q. Removal or Abandonment of Third Parties' Property.*

Except as set forth in the Purchase Agreement (if applicable), nothing in the Plan shall impose upon the Post-Effective Date Debtors any obligation to store or protect any third party's property, all of which property will be deemed abandoned and surrendered to the Post-Effective Date Debtors if such property has not been removed (by its owner in a commercially reasonable manner, and with insurance to cover any damage from such removal) from any real property owned or leased by the Post-Effective Date Debtors within forty-five (45) days after Confirmation of the Plan. Following the abandonment and surrender of any such property, the Post-Effective Date Debtors may sell, transfer, assign, scrap, abandon, or otherwise dispose of such property and retain any proceeds resulting therefrom.

[*Remainder of page intentionally left blank.*]

Dated: November 13, 2023

Cyxtera Technologies, Inc.
on behalf of itself and all other Debtors

*/s/ Eric Koza*

Name: Eric Koza
Title: Chief Restructuring Officer

**Exhibit B**

**Confirmation and Effective Date Notice**

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
Edward O. Sassower, P.C. (admitted *pro hac vice*)
Christopher Marcus, P.C. (admitted *pro hac vice*)
Derek I. Hunter (admitted *pro hac vice*)
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**COLE SCHOTZ P.C.**
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Warren A. Usatine, Esq.
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fyudkin@coleschotz.com

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

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

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al*., | Case No. 23-14853 (JKS) |
| Debtors.[8] | (Jointly Administered) |

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

**NOTICE OF (A) ENTRY OF THE ORDER CONFIRMING THE FOURTH AMENDED JOINT PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE AND (B) OCCURRENCE OF EFFECTIVE DATE**

**TO ALL CREDITORS, INTEREST HOLDERS, AND OTHER PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE** that the Honorable John K. Sherwood, United States Bankruptcy Judge, entered an order confirming the *Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as may be modified, the "Plan") [Docket No. 694], which the Clerk of the United States Bankruptcy Court for the District of New Jersey (the "Court") docketed on November 13, 2023.[9]

**PLEASE TAKE FURTHER NOTICE** that copies of the Confirmation Order, the Plan, and the related documents may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at https://www.kccllc.net/cyxtera. You may also obtain copies of any pleadings by visiting the Court's website at https://www.njb.uscourts.gov in accordance with the procedures and fees set forth therein.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date occurred on [[●], 2023].

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise provided in the Plan, the Confirmation Order, or any other applicable order of the Court or Holders of an Allowed Administrative Claim and the Debtors have agreed otherwise, all requests for payment of Administrative Claims must be Filed and served on the Debtors on or before the Administrative Claims Bar Date: with respect to Administrative Claims other than Professional Fee Claims, the date that is thirty (30) days after the Effective Date; with respect to Professional Fee Claims, shall be forty-five (45) days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request on or before the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, any purchasers of their assets, or their respective property, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. Parties exempted from filing requests for payment of Administrative Claims under the Bar Date Order are not required to comply the Administrative Claims Bar Date.

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise provided by a Final Order of the Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the Court within thirty (30) days after the effective date of such rejection.

**PLEASE TAKE FURTHER NOTICE** that the Court has approved certain discharge, release, exculpation, injunction, and related provisions in Article VIII of the Plan.

[9] Capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that the Plan and its provisions are binding on the Debtors, the Post-Effective Date Debtors, and any Holder of a Claim or an Interest and such Holder's respective successors and assigns, whether or not the Claim or the Interest of such Holder is Impaired under the Plan, and whether or not such Holder voted to accept the Plan**.**

*[Remainder of page intentionally left blank]*

Dated: [_____], 2023

/*s*/

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**KIRKLAND & ELLIS LLP**
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*Co-Counsel for Debtors and*
*Debtors in Possession*

Form 147 − ntccnfpln

**UNITED STATES BANKRUPTCY COURT**

District of New Jersey
MLK Jr Federal Building
50 Walnut Street
Newark, NJ 07102

---

Case No.: 23−14853−JKS
Chapter: 11
Judge: John K. Sherwood

In Re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):
Cyxtera Technologies, Inc.
dba Starboard Value Acquisition Corp.
2333 Ponce De Leon Boulevard
Suite 900
Coral Gables, FL 33134

Social Security No.:

Employer's Tax I.D. No.:
84−3743013

---

**NOTICE OF ORDER CONFIRMING CHAPTER 11 PLAN**

NOTICE IS HEREBY GIVEN that an Order Confirming the Chapter 11 plan was entered on November 17, 2023.

IT IS FURTHER NOTICED,

1. The clerk shall close the case 180 days after entry of the order confirming plan. Local Rule 3022−1(a).

2. On motion of a party in interest filed and served within the time period set forth above, the court may for cause extend the time for closing the case. Local Rule 3022−1(c).

3. All applications for allowance of fees and expenses shall be filed within 90 days after entry of a final order confirming plan, or such fees and expenses shall be deemed to be waived. Local Rule 2016−4.

Dated: November 17, 2023
JAN: rah

Jeanne Naughton
Clerk

# Appendix “D”

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
Edward O. Sassower, P.C. (admitted *pro hac vice*)
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*Co-Counsel for Debtors and Debtors in Possession*

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

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al*., | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

**NOTICE OF FILING PLAN SUPPLEMENT FOR THE THIRD AMENDED JOINT PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that, as contemplated by the *Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 649] (as may be amended or modified from time to time and including all exhibits and supplements thereto, the "Plan"),[2] on November 3, 2023, the

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

2314853231102000000000003

[2] Capitalized terms used but not defined in herein have the meanings given to them in the Plan.

above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the plan supplement (the "Plan Supplement") with the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court").

**PLEASE TAKE FURTHER NOTICE** that the Plan Supplement includes current drafts of the following documents (certain of which continue to be negotiated pursuant to the terms of the Plan, the RSA, and the Purchase Agreement by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, and will be filed in substantially final form on or prior to the Effective Date):

| | |
|---|---|
| **Exhibit A** | Draft Schedule of Retained Causes of Action |
| **Exhibit B** | Draft Restructuring Transactions Memorandum |
| **Exhibit C** | Draft Schedules of Assumed and Rejected Executory Contracts and Unexpired Leases |
| **Exhibit C-1** | Draft Schedule of Assumed Executory Contracts and Unexpired Leases |
| **Exhibit C-2** | Draft Schedule of Rejected Executory Contracts and Unexpired Leases |
| **Exhibit D** | GUC Trust Agreement |
| **Exhibit E** | Plan Administrator Agreement |
| **Exhibit F** | Purchase Agreement |

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve all rights, with the consultation or consent of any applicable counterparties to the extent required under the Plan, the RSA, or the Purchase Agreement, to alter, amend, modify, or supplement the Plan Supplement and any of the documents contained herein in accordance with the terms of the Plan, the RSA, and the Purchase Agreement; *provided* that if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a redline of such document with the Bankruptcy Court. The final version of any such document may contain material differences from the version filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard.

**PLEASE TAKE FURTHER NOTICE** that the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the order confirming the Plan.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan and Disclosure Statement are accessible now, free of charge, on the Debtors' restructuring website, https://www.kccllc.net/cyxtera, and upon request of the Debtors' co-counsel, Kirkland & Ellis LLP and Cole Schotz P.C., at the respective addresses specified herein.

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek confirmation of the Plan at the Confirmation Hearing to be held before the Honorable John K. Sherwood, United States Bankruptcy Court for the District of New Jersey, 50 Walnut Street, 3rd Floor, Newark, New Jersey 07102, Courtroom 3D, on **November 16, 2023, at 2:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that copies of all documents filed in these chapter 11 cases are available free of charge by visiting https://www.kccllc.net/cyxtera. You may also obtain copies of any pleadings by visiting the Court's website at https://ecf.njb.uscourts.gov in accordance with the procedures and fees set forth therein.

Dated: November 3, 2023

*/s/ Michael D. Sirota*

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**UNITED STATES BANKRUPTCY COURT**
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| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al*., | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

# PLAN SUPPLEMENT FOR THE THIRD AMENDED JOINT PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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

## Table of Contents[2]



[2] Capitalized terms used but not defined in herein have the meanings given to them in the Plan.

# Exhibit A

## Draft Schedule of Retained Causes of Action

Article IV.E of the Plan provides that: "but subject in all respects to Article VIII hereof and, in the event of a Sale Transaction, the Purchase Agreement and any related documents and schedules, the Post-Effective Date Debtors, shall retain and may enforce (or the Plan Administrator may enforce, if applicable) all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Schedule of Retained Causes of Action, **and the rights of the Post-Effective Date Debtors to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action (i) acquired by the Purchaser in accordance with the Purchase Agreement, as applicable, or (ii) released or exculpated herein (including, without limitation, by the Debtors) pursuant to the releases and exculpations contained in the Plan, including in Article VIII hereof, which shall be deemed released and waived by the Debtors and the Post-Effective Date Debtors, as applicable, as of the Effective Date.**"

Article IV.E of the Plan further provides that: "**No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Post-Effective Date Debtors, as applicable, will not pursue any and all available Causes of Action against it. The Debtors and the Post-Effective Date Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as may be assigned or transferred to the Purchaser in accordance with the Purchase Agreement or as otherwise expressly provided in the Plan, including Article VIII of the Plan.**"

Without limiting the generality of Article IV.E of the Plan, the Debtors identify the following types of Causes of Action that are expressly preserved by the Debtors and the Post-Effective Date Debtors after the Effective Date, solely to the extent such Causes of Action are not otherwise specifically released, settled, compromised, transferred, or assigned under the Plan, the Purchase Agreement, or any other order of the Court.

Subject to the terms and conditions set forth in the Plan and, the RSA, and the Purchase Agreement (including certain consent and approval rights), the Debtors expressly reserve the right to alter, modify, amend, remove, augment, or supplement this Schedule of Retained Causes of Action at any time with additional Retained Causes of Action. Failure to include any Retained Cause of Action herein at any time shall not be a bar and shall not have any impact on the Post-Effective Date Debtors' and Plan Administrator's rights to bring any Retained Cause of Action not otherwise released pursuant to the Plan.

### I. Causes of Action Related to Taxes

Unless otherwise specifically released, settled, compromised, transferred, or assigned under the Plan or the Purchase Agreement, the Debtors and the Post-Effective Date Debtors expressly reserve all Causes of Action against federal, state, local, or international taxing authorities based in whole or in part upon any and all tax obligations, tax credits, refunds, offsets, or other claims to which any Debtor or Post-Effective Date Debtor is a party or pursuant to which any Debtor or Post-Effective Date Debtor has any rights whatsoever, including, without limitation,

against or related to all federal, state, local, or international taxing authorities that owe or that may in the future owe money related to tax obligations, tax credits, refunds, offsets, or other claims to the Debtors or the Post-Effective Date Debtors, regardless of whether such entity is specifically identified herein.

## II. Causes of Action Related to Insurance Policies

Unless otherwise specifically released, settled, compromised, transferred, or assigned under the Plan or the Purchase Agreement, the Debtors and the Post-Effective Date Debtors expressly reserve all Causes of Action based in whole or in part upon any and all insurance contracts and insurance policies to which any Debtor or Post-Effective Date Debtor is a party or pursuant to which any Debtor or Post-Effective Date Debtor has any rights whatsoever, regardless of whether such contract or policy is specifically identified in the Plan, this Plan Supplement, or any amendments thereto, against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matters.

## III. Causes of Action Related to Disputed Claims

Unless otherwise specifically released, settled, compromised, transferred, or assigned under the Plan or the Purchase Agreement, all rights, claims, defenses, and Causes of Action against any Holder of a Claim seeking to collect a distribution from or assert other rights against the Estate, Post-Effective Date Debtors or the Distribution Reserve Accounts, whether at law or equity, under any theory and of any nature whatsoever, unless and until each of such Holder's Claims become Allowed Claims.

# Exhibit B

## Draft Restructuring Transactions Memorandum

Certain documents, or portions thereof, contained or to be contained in this **Exhibit B** and the Plan Supplement remain subject to continued review, as applicable, by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, and the final version of any such document may contain material differences from the version filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The respective rights of the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, are expressly reserved, subject to the terms and conditions set forth in the Plan, the RSA, and the Purchase Agreement (including certain consent and approval rights), to alter, amend, modify, or supplement the Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan, the RSA, and the Purchase Agreement, or by order of the Bankruptcy Court; *provided* that if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a redline of such document with the Bankruptcy Court.

## Restructuring Transactions Memorandum

The Debtors currently anticipate that the Plan will be consummated through Asset Sales and that the Restructuring Transactions will occur pursuant to the following steps. Unless otherwise set forth below, the steps will occur on or before the Effective Date and in the order listed below.[1]

1. Prior to the Effective Date, the Debtors will consummate certain Asset Sales.

2. Prior to the Effective Date, the Debtors will, and will cause their non-Debtor Affiliates to, consummate certain internal restructuring steps (including the cancellation, contribution, distribution or other resolution of certain Debtor Intercompany Claims and other outstanding intercompany accounts) as required by the Asset Purchase Agreement, dated as of November 1, 2023, by and among Phoenix Data Center Holdings LLC, an affiliate of Brookfield Infrastructure Partners L.P., as Purchaser, and Cyxtera Technologies, Inc. and its subsidiaries named therein, as Sellers (the "Purchase Agreement").

3. On and contemporaneously with the Effective Date, pursuant to and in accordance with the Purchase Agreement and the Plan, the Debtors will, and will cause their non-Debtor Affiliates to, consummate the sale of the Acquired Assets (as defined in the Purchase Agreement) to, and the assumption of the Assumed Liabilties (as defined in the Purchase Agreement) by, the Purchaser and/or its Designees (as defined in the Purchase Agreement) as well as the other transactions contemplated by the Purchase Agreement. [2]

4. Following the consummation of the Asset Sales occurring pursuant to Steps 1 and 3, the Debtors or the Post-Effective Date Debtors, as applicable, shall make payments required by the Plan to Holders of Claims and other parties entitled to such payments pursuant to the Plan, other than to Holders of General Unsecured Claims.

5. On the Effective Date, the Debtors will transfer the GUC Trust Assets to the GUC Trust. Thereafter, the GUC Trust will distribute all of the interests in the GUC Trust to Holders of General Unsecured Claims *pro rata* in full satisfaction and discharge of their Claims pursuant to the Plan.

6. On the Effective Date, subject to the terms of the Purchase Agreement, remaining Debtor Intercompany Claims may, but will not necessarily, be cancelled, contributed, distributed, or otherwise resolved, as determined by the Debtors or Reorganized Cyxtera and reflected in the books and records thereof.

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[1] Unless otherwise defined in reference to the Purchase Agreement, capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

[2] The Restructuring Transactions described herein are limited to those actions the Debtors may undertake pursuant to and in accordance with Article IV of the Plan to implement the Plan and do not describe all transactions contemplated by the Purchase Agreement, including certain actions that may be taken by non-Debtor Affiliates.

7. Subject to the terms of the Purchase Agreement, as soon as reasonably practicable following the Effective Date, the Debtors shall be liquidated and dissolved.

[*Remainder of page intentionally left blank.*]

# Exhibit C

## Draft Schedules of Assumed and Rejected Executory Contracts and Unexpired Leases

The Debtors have included a schedule of Executory Contracts and Unexpired Leases that they intend to assume as of the Effective Date or assume and assign in accordance with the Purchase Agreement and the Plan's treatment of Executory Contracts and Unexpired Leases. The Debtors reserve their rights to alter, amend, modify, or supplement this **Exhibit C** with the consent of the Purchaser and consistent with the Purchase Agreement.

Certain documents, or portions thereof, contained or to be contained in this **Exhibit C** and the Plan Supplement remain subject to continued review, as applicable, by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, and the final version of any such document may contain material differences from the version filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The respective rights of the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, are expressly reserved, subject to the terms and conditions set forth in the Plan, the RSA, and the Purchase Agreement (including certain consent and approval rights), to alter, amend, modify, or supplement the Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan, the RSA, and the Purchase Agreement, or by order of the Bankruptcy Court; *provided* that if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a redline of such document with the Bankruptcy Court.

Article V of the Plan provides that each Executory Contract or Unexpired Lease not previously rejected, assumed, or assumed and assigned shall (i) in the event of an Equity Investment Transaction or a Recapitalization Transaction, be deemed assumed or assumed and assigned, as applicable; or (ii) in the event of an Asset Sale, be (a) assumed or assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement, as applicable, if it is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement if it is not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and does not relate exclusively to Excluded Assets or Excluded Liabilities; or (c) rejected if it is (x) listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or (y) not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and relates exclusively to the Excluded Assets or Excluded Liabilities. For the avoidance of doubt, the foregoing shall not affect any Executory Contract or Unexpired Lease that is (i) explicitly designated by the Plan or the Confirmation Order to be assumed or assumed and assigned, as applicable, in connection with the Confirmation of the Plan; (ii) subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (iii) a D&O Liability Insurance Policy; or (iv) a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates.

**Exhibit C-2**

**Draft Schedule of Rejected Executory Contracts and Unexpired Leases**

**Draft Schedule of Rejected Executory Contracts and Unexpired Leases**

| Debtor | Counter Party Name | Description |
|---|---|---|
| Cyxtera DC Holdings, Inc | 1111 Comstock Property, LLC | Lease guarantee for 1111 Comstock Street, Santa Clara - Powered Shell Lease Agreement |
| Cyxtera DC Holdings, Inc | 1231 Comstock Property, LLC | Lease guarantee for 1231 Comstock Street, Santa Clara - Powered Shell Lease Agreement |
| Cyxtera Communications, LLC | ABM Industry Groups, LLC | Procurement Standard Terms and Conditions |
| Cyxtera Netherlands B.V. | AFS Transport (Rotterdam) B.V. | Agreement/Authorisation to Act as Direct Representative |
| Cyxtera Communications Canada, ULC | Angelo Paone Électrique Inc. | Procurement Standard Terms and Conditions |
| Cyxtera Technologies, LLC | AuditBoard, Inc. | Amendment No. 3 to the Subscription Agreement Dated November 27, 2018 |
| Cyxtera Technologies, LLC | AuditBoard, Inc. | Amendment No. 4 to the Subscription Agreement Dated November 27, 2018 |
| Cyxtera Technologies, LLC | AuditBoard, Inc. | Amendment to the Subscription Agreement Dated May 27, 2023 |
| Cyxtera Technologies, Inc. | Auditboard, Inc. | Subscription Agreement |
| Cyxtera Communications, LLC | Buckeye Landscape Service, Inc. | Procurement Standard Terms and Conditions |
| Cyxtera Communications, LLC | Buckeye Landscape Service, Inc. | Procurement Standard Terms and Conditions |
| Cyxtera Technologies, Inc | Calculated Research & Technology | Master Reseller Agreement |
| Cyxtera Communications, LLC | Collins Building Services, Inc. | Procurement Standard Terms and Conditions |
| Cyxtera Communications, LLC | Colo Advisor, LLC | REFERRAL AGREEMENT |
| Cyxtera Management, Inc. | Corporation Service Company (CSC) | Domain hosting agreement |
| Cyxtera Federal Group, Inc | CTG Federal LLC | FEDERAL RESELLER AGREEMENT |
| Cyxtera Communications, LLC | Curbside Landscape & Irrigation, Inc. | Procurement Standard Terms and Conditions |
| Cyxtera Communications, LLC | Curbside Landscape & Irrigation, Inc. | Snow and Ice Management Addendum #1 |
| Cyxtera Netherlands B.V. | Cyrus One | Turn Key Datacenter Lease (9/30/2019) |
| Cyxtera Netherlands B.V. | Cyrus One | Variation and Waiver Agreement (9/30/2019) |
| Cyxtera Netherlands B.V. | CyrusOne AMS3 B.V. | General Terms and Conditions |
| Cyxtera Netherlands B.V. | CyrusOne AMS3 B.V. | Turn Key Datacenter Lease |
| Cyxtera Netherlands B.V. | CyrusOne AMS3 B.V. | Variation and Waiver Agreement to Turn Key Datacenter Lease |
| Cyxtera DC Holdings, Inc | CyrusOne AMS3, B.V. | Lease guarantee for Linieweg 1, Halfweg - TKD Lease |

| Debtor | Counter Party Name | Description |
|---|---|---|
| Cyxtera Netherlands B.V. | DC Squad B.V. t/a DC People | Procurement Standard Terms and Conditions |
| Cyxtera Technologies, LLC | Demandbase, Inc. | Order Form - dated April 28, 2023 / Q - 60501 - 2 |
| Cyxtera Technologies, LLC | Demandbase, Inc. | Order Form - dated May 5, 2023 / Q - 63523 - 1 |
| Cyxtera Netherlands B.V. | DGTE B.V. | Partner Agreement |
| Cyxtera Netherlands B.V. | DGTE B.V. | Partner Agreement |
| Cyxtera Netherlands B.V. | DGTE BV | Procurement Standard Terms & Conditions |
| Cyxtera Technologies, LLC | Diligent Corporation | Order Form |
| Cyxtera Technologies, Inc. | Diligent Corporation | Service Agreement Amendment |
| Cyxtera Communications, LLC | DNA Cleaning Inc | Procurement Standard Terms and Conditions |
| Cyxtera Management, Inc. | Elevate Consult LLC | Procurement Standard Terms and Conditions |
| Cyxtera Management, Inc. | Elevate Consult, LLC | GRC Tasks Proposal 2022 Pursuant to Procurement Standard Terms and Conditions Dated March 22, 2021 |
| Cyxtera Management, Inc. | Elevate Consult, LLC | User Access Reviews Proposal for Cyxtera |
| Cyxtera Communications, LLC | Equinix do Brasil Soluções De Tecnologia em Informática Ltda | Agreement For Rendering of Services, Leasing and Assignment of Usage Rights (2/3/2011) |
| Cyxtera Communications, LLC | Equinix do Brasil Soluções De Tecnologia em Informática Ltda | Amendment to Agreement for Rendering Services, Leasing and Assignment of Usage Rights and Commercial Proposal # 1 (5/9/2013) |
| Cyxtera Communications, LLC | Equinix do Brasil Soluções De Tecnologia em Informática Ltda | Commercial Proposal #1, Annex 1 Infrastructure (10/6/2010) |
| Cyxtera Management, Inc. | H&CO, LLP | Letter re: Statement of Work |
| Cyxtera Federal Group, Inc | Immix Group | Aggregation Agreement |
| Cyxtera Communications, LLC | Infinite Computer Solutions, Inc. | REFERRAL AGREEMENT |
| Cyxtera Management, Inc. | Influ2 Inc | Influ2 Terms of Service |
| Cyxtera Management, Inc. | Influ2 Inc | Order Form #1 |
| Cyxtera Technologies, LLC | Informatica LLC | Quote for Subscription Support Renewal |
| Cyxtera Communications Canada, ULC | Jani-King of Southern Ontario | Procurement Standard Terms and Conditions |
| Cyxtera Management, Inc. | Lazard Freres & Co | Engagement Letter Dated December 23 2022 |
| Cyxtera Management, Inc. | Lazard Freres & Co | Letter Agreement Dated December 23 2022 |
| Cyxtera Communications Canada, ULC | Manufacturers Life Insurance Company | Service and fee agreement |
| Cyxtera Communications, LLC | Marsden Bldg Maintenance, L.L.C. | Procurement Standard Terms & Conditions |
| Cyxtera Communications, LLC | MASH Services of Illinois, Inc. d.b.a. Code Pest Controls | Procurement Standard Terms & Conditions |
| Cyxtera Netherlands B.V. | Meijers Assurantien B.V. | Service Level Agreement (SLA) Employee Benefits |

| Debtor | Counter Party Name | Description |
|---|---|---|
| Cyxtera DC Holdings, Inc. | Moody's Investors Service, Inc. | Application for Moody's Rating Assessment Service |
| Cyxtera Communications, LLC | ORANJE Commercial Janitorial | Procurement Standard Terms & Conditions |
| Cyxtera Federal Group, Inc. | Phronesis Research LLC | Incentivized Consultant Agreement |
| Cyxtera Federal Group, Inc. | Phronesis Research LLC | Procurement Standard Terms and Conditions |
| Cyxtera Netherlands B.V. | Royale Europe | Agreement/authorisation to act as direct representative |
| Cyxtera Technologies, LLC | S&P Global Market Intelligence, LLC | 451 Research Statement of Work to S&P Licensed Professional Services Agreement |
| Cyxtera Communications, LLC | S&P Global Market Intelligence, LLC | Reinstatement & Amendment 451 Agreement to the Subscription Agreement Dated June 20, 2017 |
| Cyxtera Technologies, LLC | S&P Global Market Intelligence, LLC | S&P Licensed Professional Service Agreement |
| Cyxtera Technologies, Inc. | Spoon Exhibit and Events | Final Invoice dated May 19, 2023 / S - 11573 - 22 |
| Cyxtera Technologies, Inc. | Spoon Exhibit and Events | Final Invoice dated May 19, 2023 / S - 11574 - 22 |
| Cyxtera Technologies, Inc. | Spoon Exhibit and Events | Statement of Work Dated March 29, 2022 |
| Cyxtera Management, Inc. | Spoon Exhibit Services, LLC | Procurement Standard Terms and Conditions |
| Cyxtera Management, Inc. | Sullivan & Cromwell, LLP | Engagement Letter |
| Cyxtera Netherlands B.V. | Tech Data | TechData Credit Application |
| Cyxtera Communications, LLC | WeWork | Amendment To Membership Agreement |
| Cyxtera Communications, LLC | WeWork | Amendment To Membership Agreement |
| Cyxtera Communications, LLC | WeWork | Membership Agreement |
| Cyxtera Communications, LLC | WeWork | Membership Agreement |
| Cyxtera Netherlands B.V. | Workrate B.V. | Agreement for the provision of security services |
| Cyxtera Management Inc | Zenab Abbas | Cyxtera Consulting Agreement |
| Cyxtera Management, Inc. | Zoho Corporation | Software License Agreement |
| Cyxtera Management, Inc. | Zoho Corporation Pvt. Ltd. And affiliates | Software License Agreement |

# Exhibit D

## GUC Trust Agreement

Certain documents, or portions thereof, contained or to be contained in this **Exhibit D** and the Plan Supplement remain subject to continued review, as applicable, by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, and the final version of any such document may contain material differences from the version filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The respective rights of the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, are expressly reserved, subject to the terms and conditions set forth in the Plan, the RSA, and the Purchase Agreement (including certain consent and approval rights), to alter, amend, modify, or supplement the Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan, the RSA, and the Purchase Agreement, or by order of the Bankruptcy Court; *provided* that if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a redline of such document with the Bankruptcy Court.

**CYXTERA TECHNOLOGIES, INC.**

**GUC TRUST AGREEMENT**

This GUC Trust Agreement (as it may be amended, modified, supplemented or restated from time to time, this "GUC Trust Agreement") dated as of [●], 2023, is made and entered into by and among Cyxtera Technologies, Inc., and its affiliated debtors,[1] (each a "Debtor" and collectively, the "Debtors"), and [_____] solely in its capacity as GUC Trustee, for the purpose of forming a trust and is executed in connection with and pursuant to the terms of the *Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc., and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 649] (as it may be amended, modified, supplemented or restated from time to time, the "Plan"), which Plan provides for, among other things, the establishment of the GUC Trust evidenced hereby (the "Trust").

**W I T N E S S E T H**

WHEREAS, the Chapter 11 Cases were commenced by the Debtors filing by voluntary chapter 11 petitions in the Bankruptcy Court on June 4, 2023;

WHEREAS, the Bankruptcy Court confirmed the Plan by order dated _____, 2023 (the "Confirmation Order") [Docket No. [●]];

WHEREAS, this GUC Trust Agreement is entered into to effectuate the establishment of the GUC Trust as provided for in the Plan and the Confirmation Order;

WHEREAS, the GUC Trust is established for the benefit of the Holders of Class 4 General Unsecured Claims ("General Unsecured Claims") as set forth in the Plan;

WHEREAS, the GUC Trust is established for the purpose of collecting, holding, administering, distributing and liquidating the GUC Trust Assets (as defined in the Plan) for the benefit of the Holders of Allowed General Unsecured Claims accordance with the terms of this GUC Trust Agreement and the Plan;

WHEREAS, the GUC Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the GUC Trust as set forth in this GUC Trust Agreement, the Confirmation Order, and the Plan;

WHEREAS, holders of Allowed General Unsecured Claims are entitled to their *pro rata* share of the GUC Trust Net Assets (as defined in the Plan);

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

WHEREAS, the GUC Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulations (hereinafter "Treasury Regulations") Section 301.7701-4(d) and to be exempt from the requirements of the Investment Company Action of 1940;

WHEREAS, the Debtors, the GUC Trustee, and the Holders of Allowed General Unsecured Claims agree to treat, for all U.S. federal income tax purposes, the transfer of the GUC Trust Assets to the GUC Trust as a deemed transfer of the GUC Trust Assets by the Debtors to the Holders of Allowed General Unsecured Claims on account of their Claims under the Plan, followed by a deemed contribution of the GUC Trust Assets by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for the interests herein, and to treat the Holders of Allowed General Unsecured Claims as the grantors and deemed owners of the GUC Trust in accordance with Treasury Regulations Section 301.7701-4;

WHEREAS, the GUC Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Section 671 of the IRC, *et seq.*, with the Holders of Allowed General Unsecured Claims treated as the grantors of the GUC Trust; and

WHEREAS, the Bankruptcy Court shall have jurisdiction over the GUC Trust, the GUC Trustee, and the GUC Trust Assets as provided herein and in the Plan and Confirmation Order.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Debtors and the Trustee agree as follows:

## ARTICLE I
## DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. All capitalized terms used in this GUC Trust Agreement not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan. The following capitalized terms have the meanings herein as described below:

1.1.1. "Business Day" shall mean any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

1.1.2. "GUC Trustee" shall mean (x) initially, the Person named in the introductory paragraph to this GUC Trust Agreement as the GUC Trustee, and (y) any successors or replacements duly appointed under the terms of this GUC Trust Agreement.

1.2 Plan Terms Control. In the case of any inconsistency between the terms of this GUC Trust Agreement and the terms of the Plan, the terms of the Plan shall govern and control. This GUC Trust Agreement shall not be construed to impair or limit in any way the rights of any Person under the Plan.

## ARTICLE II
## ESTABLISHMENT, PURPOSE AND FUNDING OF GUC TRUST

2.1 Creation and Name; Formation

2.1.1. Upon the Effective Date of the Plan, the GUC Trust is hereby created. The GUC Trustee may conduct the affairs of the GUC Trust under the name of the "Cyxtera GUC Trust" or such variation thereof as the GUC Trustee sees fit.

2.2 Purpose of GUC Trust. The Debtors and the GUC Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code, hereby establish the GUC Trust (i) for the purpose of collecting, administering, distributing and liquidating the GUC Trust Assets for the benefit of the Holders of Allowed General Unsecured Claims in accordance with the terms of this GUC Trust Agreement, the Plan, and the Confirmation Order, and (ii) to make distributions to the Holders of Allowed General Unsecured Claims, in each case to the extent required by the Plan and Confirmation Order. The Debtors or Post-Effective Date Debtors, and their Related Parties (as applicable), shall have no liability with respect to the distribution or payment of any GUC Trust Assets to any of the Holders of Allowed General Unsecured Claims, except as otherwise provided for in the Plan. The activities of the GUC Trust shall be limited to those activities set forth in this GUC Trust Agreement and as otherwise contemplated by the Plan. The GUC Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and the primary purpose of the GUC Trust shall be to liquidate and distribute the GUC Trust Assets and the GUC Trustee understands and agrees that the GUC Trust has no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the GUC Trust as set forth in the Plan.

2.3 Transfer of GUC Trust Assets.

2.3.1. On or prior to the date of Effective Date, the Debtors shall have transferred to the GUC Trust the GUC Trust Assets. Each Debtor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Holders of Allowed General Unsecured Claims, all of the GUC Trust Assets owned, held, possessed or controlled by such Debtor to the GUC Trustee as of the Effective Date, in trust for the benefit of Holders of Allowed General Unsecured Claims, for the uses and purposes as specified in this GUC Trust Agreement and the Plan, and all such GUC Trust Assets are automatically vested in the GUC Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, except as specifically provided in the Plan. None of the Debtors shall have any further obligations with respect to the Allowed General Unsecured Claims under the Plan or the distribution or payment of any proceeds of the GUC Trust Assets to any of the Holders of Allowed General Unsecured Claims upon the transfer of the GUC Trust Assets to the GUC Trust in accordance with this GUC Trust Agreement and the Plan, except that the Debtors or their successor(s), including without limitation, the Post-Effective Date Debtors, shall, from time to time, execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Debtors or their successor (i.e., the Post-Effective Date Debtors) shall take or cause to be taken such further action, in each case as the GUC Trustee may reasonably deem necessary or appropriate, to vest or perfect in or confirm to the GUC Trustee title to and possession of the GUC Trust Assets.

2.3.2. For all U.S. federal, state, and local income tax purposes, the Debtors, the Holders of Allowed General Unsecured Claims, and the GUC Trustee shall treat the transfer of the GUC Trust Assets to the GUC Trust as a deemed transfer of the GUC Trust Assets by the Debtors to the Holders of Allowed General Unsecured Claims on account of their Allowed Claims under the Plan, followed by a deemed contribution of the GUC Trust Assets by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for their interests in the GUC Trust. Thus, the Holders of Allowed General Unsecured Claims shall be treated as the grantors and deemed owners of the GUC Trust for U.S. federal income tax purposes.

2.3.3. To the extent that any GUC Trust Assets cannot be transferred to the GUC Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such GUC Trust Assets shall be deemed to have been retained by the Debtors or their successor and the GUC Trustee shall be deemed to have been designated as a representative of the Debtors or their successor pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such GUC Trust Assets on the behalf of the Debtors or their successor.

2.4 Nature of Trust. This GUC Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a liquidating trust. The GUC Trust is irrevocable but this GUC Trust Agreement is subject to amendment and waiver as provided in this GUC Trust Agreement. The GUC Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, joint stock company or association, nor shall the GUC Trustee, or the Holders of Allowed General Unsecured Claims, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Holders of Allowed General Unsecured Claims, on the one hand, to the GUC Trust and the GUC Trustee, on the other hand, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this GUC Trust Agreement, the Plan and the Confirmation Order.

2.5 Effectiveness. The effectiveness of this GUC Trust Agreement shall occur upon the Effective Date of the Plan.

2.6 Incorporation of the Plan. The Plan and the Confirmation Order are each hereby incorporated into this GUC Trust Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this GUC Trust Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this GUC Trust Agreement.

## ARTICLE III
## ADMINISTRATION OF THE GUC TRUST

3.1 Rights, Powers and Privileges. In connection with the administration of the GUC Trust, the GUC Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the GUC Trust (including, without limitation, all powers, rights, and duties under applicable law); provided, that the GUC Trustee shall not perform any acts that are

inconsistent with this GUC Trust Agreement, the Plan, and/or the Confirmation Order. The GUC Trust and the GUC Trustee, as applicable, shall have all of the rights and powers granted to the Debtors or Post-Effective Date Debtors in the Plan as it pertains to General Unsecured Claims and Holders of Allowed General Unsecured Claims, including *inter alia*, without limitation Article III and IV of the Plan, such as, by example only, and in addition to any powers and authority specifically set forth in other provisions of the Plan, the power to:

3.1.1. receive, manage, supervise, and protect the GUC Trust Assets;

3.1.2. hold legal title to any and all rights of the holders of GUC Trust Interests in or arising from the GUC Trust Assets, including, without limitation, collecting and receiving any and all money and/or other property belonging to the GUC Trust;

3.1.3. protect and enforce the rights to the GUC Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

3.1.4. establish and maintain a website for the purpose of providing notice of GUC Trust activities in lieu of sending written notice to holders of GUC Trust Interests, subject to providing notice of such website to such holders;

3.1.5. take or refrain from taking any and all other actions that the GUC Trustee reasonably deems necessary or convenient for the continuation, protection, and maximization of GUC Trust Assets, the protection of interests holders of GUC Trust Interests or to carry out the purposes provided herein;

3.1.6. effect all actions and execute all agreements, instruments and other documents necessary to reconcile and resolve General Unsecured Claims;

3.1.7. establish, as necessary, disbursement accounts for the deposit and distribution of all amounts to be distributed under the Plan to Holders of Allowed General Unsecured Claims;

3.1.8. in reliance upon the Debtors' schedules and the official Claims register maintained in the Chapter 11 Cases, maintain a register evidencing the interest herein held by each Holder of a General Unsecured Claim and, in accordance with section 8.1 of this GUC Trust Agreement;

3.1.9. review, reconcile, allow, prosecute, object to, compromise, settle and withdraw objections to General Unsecured Claims, as appropriate;

3.1.10. establish, adjust, and maintain reserves for Disputed General Unsecured Claims required to be administered by the GUC Trust;

3.1.11. calculate and make Distributions in accordance with the Plan to Allowed General Unsecured Claims

3.1.12. employ and compensate professionals to represent the GUC Trustee with respect to the GUC Trustee's responsibilities;

3.1.13. cause the GUC Trust to make all tax withholdings, file tax information returns, file and prosecute tax refund claims, make tax elections by and on behalf of the GUC Trust, and file tax returns for the GUC Trust as a grantor trust under section 671 of the IRC and Treasury Regulations section 1.671-4(a) pursuant to and in accordance with the Plan and this GUC Trust Agreement (subject to the treatment of any portion of the GUC Trust allocable to Disputed Claims, if any, as one or more "disputed ownership funds" governed by Treasury Regulations Section 1.468B-9), and pay taxes, if any, payable for and on behalf of the GUC Trust; provided, however, neither the GUC Trust nor the GUC Trustee shall have any responsibility in any capacity whatsoever for the preparation, filing, signing or accuracy of the Debtors' or the Post-Effective Date Debtors' tax returns that are due to be filed after the Effective Date or for any tax liability related thereto, which shall be the sole responsibility of the Post-Effective Date Debtors;

3.1.14. exercise such other powers as may be vested in the GUC Trustee by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan as it pertains to General Unsecured Claims, the GUC Trust Assets, and the Holders of Allowed General Unsecured Claims.

3.2 Agents and Professionals. The GUC Trustee may, but shall not be required to, consult with and retain attorneys, accountants, real estate brokers, appraisers, valuation counselors, transfer agents, a third-party disbursing agent, or other parties deemed by the GUC Trustee to have qualifications necessary to assist in the proper administration of the GUC Trust. The GUC Trustee may pay the reasonable salaries, fees, and expenses of such persons (including itself), including contingency fees, out of the GUC Trust Assets and without further order of the Bankruptcy Court.

3.3 Investment and Safekeeping of GUC Trust Assets. All GUC Trust Assets received by the GUC Trustee shall, until distributed or paid as provided in this GUC Trust Agreement or the Plan, be held in the GUC Trust for the benefit of the Holders of Allowed General Unsecured Claims. The GUC Trustee shall be under no obligation to generate or produce, or have any liability for, interest or other income on any monies received by the GUC Trust and held for distribution or payment to the Holders of Allowed General Unsecured Claims, except as such interest or income shall be actually received by the GUC Trustee. Investments of any monies held by the GUC Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the GUC Trustee to invest monies held by the GUC Trustee, or any income earned by the GUC Trust shall be limited to the right and power to invest such monies, pending periodic distributions in accordance with the terms hereof and the Plan. For the avoidance of doubt, the investment powers of the GUC Trustee in this GUC Trust Agreement, other than those reasonably necessary to maintain the value of the GUC Trust Assets and the liquidation purpose of the GUC Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposits, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills, and in all cases limited only to those investments permitted to be made by a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d).

3.4 Limitations on GUC Trustee. On behalf of the GUC Trust or the Holders of Allowed General Unsecured Claims, the GUC Trustee shall not at any time: (i) enter into or engage in any trade or business (other than the management and disposition of the GUC Trust Assets), and no part of the GUC Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of

by the GUC Trust in furtherance of any trade or business, (ii) except as provided in section 3.3 hereof and below, reinvest any GUC Trust Assets, or (iii) take any action that would jeopardize treatment of the GUC Trust as a "liquidating trust" for U.S. federal income tax purposes.

3.4.1. Other than as contemplated by the Plan or this GUC Trust Agreement, the GUC Trustee is not empowered to incur indebtedness.

3.4.2. The GUC Trustee may invest the Cash of the GUC Trust, including any earnings thereon or proceeds therefrom, any Cash realized from the liquidation of the GUC Trust Assets, or any Cash that is remitted to the GUC Trust from any other Person, which investments, for the avoidance of doubt, will not be required to comply with Bankruptcy Code Section 345(b); provided, however, that such investments must be investments that are permitted to be made by a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d), as reflected therein, or under applicable guidelines, rulings, or other controlling authorities. The GUC Trustee shall have no liability in the event of the insolvency or failure of any institution in which he or she has invested any funds of the GUC Trust.

3.4.3. The GUC Trustee shall hold, collect, conserve, protect and administer the GUC Trust Assets in accordance with the provisions of this GUC Trust Agreement and the Plan, and pay and distribute amounts as set forth herein for the purposes set forth in this GUC Trust Agreement. Any determination by the GUC Trustee as to what actions are in the best interest of the GUC Trust shall be made in accordance with the GUC Trustee's fiduciary duty to act in the best interest of the Holders of Allowed General Unsecured Claims and shall be determinative.

3.5 Bankruptcy Court Approval of GUC Trustee Actions. Except as provided in the Plan or otherwise specified in this GUC Trust Agreement, the GUC Trustee need not obtain the order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as otherwise provided herein, the GUC Trustee shall exercise its business judgment for the benefit of the Holders of Allowed General Unsecured Claims in order to maximize the value of the GUC Trust Net Assets and distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the GUC Trustee shall have the right to submit to the Bankruptcy Court any question or questions regarding which the GUC Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the GUC Trust with respect to any of the GUC Trust Assets, this GUC Trust Agreement, or the Plan, including the administration or distribution of any of the GUC Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and shall approve or disapprove any such proposed action upon motion by the GUC Trust.

3.6 Reliance by GUC Trustee:

(a) The GUC Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties;

(b) The GUC Trustee may consult with any and all of the GUC Trustee's professionals and the GUC Trustee shall not be liable for any action taken or omitted to be taken by the GUC Trustee in accordance with the advice of such professionals; and

(c) Persons dealing with the GUC Trustee shall look only to the GUC Trust Assets to satisfy any liability incurred by the GUC Trustee to such Person in carrying out the terms of this GUC Trust Agreement, and the GUC Trustee shall not have any personal obligation to satisfy any such liability.

3.7 Valuation of GUC Trust Assets. The GUC Trustee shall apprise the Holders of Allowed General Unsecured Claims of the value of the GUC Trust Assets. The Debtors, the Holders of Allowed General Unsecured Claims, and the GUC Trust will consistently report the valuation of the assets transferred to the GUC Trust. Such consistent valuations and revised reporting will be used for all U.S. federal, state, local, and other applicable income tax purposes. Income, deductions, gain, or loss from the GUC Trust shall be reported to the beneficiaries of the GUC Trust (the "Beneficiaries") in conjunction with the filing of the GUC Trust's income tax returns. Each Beneficiary shall report income, deductions, gain, or loss on such Beneficiary's income tax returns. Any dispute regarding the valuation of GUC Trust Assets shall be resolved by the Bankruptcy Court.

## ARTICLE IV
## DISTRIBUTIONS FROM THE GUC TRUST

4.1 Distributions. After the Effective Date, as and to the extent required by the Plan, the GUC Trustee shall make distributions from the GUC Trust Net Assets in accordance herewith to Holders of Allowed General Unsecured Claims in respect of their interests in the GUC Trust.

4.2 Provisions Governing Distributions. All distributions to be made under this GUC Trust Agreement shall be made in accordance with the Plan.

4.3 Timing of Distributions. Any payment or other distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day, but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail for the entitled recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

4.4 Payments Limited to GUC Trust Net Assets. All payments to be made by the GUC Trustee to or for the benefit of any Allowed General Unsecured Claims shall be made only to the extent that the GUC Trust has sufficient funds or reserves to make such payments in accordance with this GUC Trust Agreement and the Plan. Each Holder of an Allowed General Unsecured Claim shall have recourse only to the GUC Trust Net Assets for distributions under this GUC Trust Agreement and the Plan.

4.5 Fees and Expenses.

4.5.1. From and after the Effective Date, the GUC Trustee is authorized to pay all GUC Trust Fees and Expenses from GUC Trust Assets. The Debtors, the Post-Effective Date Debtors, or any of their Affiliates (or anyone acting on their behalf) shall not be responsible for any costs, fees, or expenses of the GUC Trust.

4.6 Priority of Distributions. Any recovery by the GUC Trust on account of the GUC Trust Assets shall be applied in accordance with the Plan; provided, however, that the GUC Trust must pay or reserve for all GUC Trust Fees and Expenses before making distributions to Holders of Allowed General Unsecured Claims.

4.7 Compliance with Laws. Any and all distributions of GUC Trust Assets shall be in compliance with applicable laws except as may be expressly provided herein or in the Plan. Without limiting the generality of the foregoing, (a) the GUC Trustee shall make distributions from the GUC Trust to the Holders of Allowed General Unsecured Claims at least annually, to the extent it determines the GUC Trust has sufficient cash available for distribution from all net cash income and all other cash received by the GUC Trust; provided, however, that the GUC Trustee may, solely to the extent permitted by applicable law as to liquidating trusts (*e.g.*, Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684), retain such amounts (i) as are reasonably necessary to meet contingent liabilities (including Disputed Claims), and to maintain the value of the Trust Assets during the term of the GUC Trust, (ii) to pay GUC Trust Fees and Expenses, and (iii) to satisfy all other liabilities incurred or assumed by the GUC Trust (or to which the GUC Trust Assets are otherwise subject) in accordance with the Plan and this GUC Trust Agreement and (b) the GUC Trustee, in its discretion, may cause the GUC Trust to withhold and / or pay to the appropriate tax authority from amounts distributable from the GUC Trust to any Holder of an Allowed General Unsecured Claim any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Holder or the GUC Trust with respect to the amount to be distributed to such Holder. The GUC Trustee shall determine such maximum amount to be withheld by the GUC Trust in its sole, reasonable discretion and shall cause the GUC Trust to distribute to the Holder any excess amount withheld. All such amounts withheld and paid to the appropriate tax authority (or reserved pending resolution of the need to withhold) shall be treated as amounts distributed to such Holders of Claims for all purposes of this GUC Trust Agreement.

4.8 Setoff Rights. The GUC Trustee may, but shall not be required to, setoff against or recoup from the Holder of any Allowed Claim (including any Holder of Allowed General Unsecured Claim) on which payments or other distributions are to be made hereunder, claims or defenses of any nature that the GUC Trust may have against such Person. However, neither the failure to do so, nor the allowance of any Claim under the Plan or otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the holder of such Allowed Claim.

4.9 Right to Object to Claims in Class 4. The GUC Trustee shall have the exclusive responsibility and authority for administering, disputing, compromising and settling or otherwise resolving and finalizing payments or other distributions with respect to Holders of Allowed General Unsecured Claims that are Holders under the Plan, all without Bankruptcy Court approval, and may

object to any such Claim until the later of one-hundred eighty (180) days following the Effective Date or such later date as may be approved by the Bankruptcy Court. The GUC Trustee at any time may move the Bankruptcy Court for an extension of such Claim objection deadline. The GUC Trustee shall generally prosecute objections to General Unsecured Claims pending as of the Effective Date and any additional objections it determines to file from and after the Effective Date but shall be entitled to exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any General Unsecured Claims. In addition, subject to the foregoing sentence, the GUC Trustee may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim in Class 4 pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

4.10 No Distributions Pending Allowance. If a Claim or any portion of a Claim is Disputed, no payment or distribution shall be made on account of any portion of such Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Plan or this GUC Trust Agreement.

## ARTICLE V
## HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS

5.1 Identification and Addresses of Holders of Allowed General Unsecured Claims. In order to determine the actual names and addresses of Holders of Allowed General Unsecured Claims, the GUC Trustee may deliver a notice to such Holders. Such notice may include a form for each Holder to complete in order to be properly registered as a Holder and be eligible for distributions under the GUC Trust. Such form may request the Holder's U.S. federal taxpayer identification number or social security number if the GUC Trustee determines that such information is necessary to fulfill the GUC Trust's tax reporting and withholding obligations. A Holder may, after the Effective Date, select an alternative mailing address by notifying the GUC Trustee in writing of such alternative distribution address. Absent receipt of such notice, the GUC Trustee shall not be obligated to recognize any such change of address. Such notification shall be effective only upon receipt by the Trustee. The GUC Trustee, in its reasonable discretion, may suspend distributions to any Holder that has not provided its U.S. federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 5.1. If tax information is not provided within ninety (90) days after an initial request, the applicable Holder's underlying claim will be expunged and its interest in the GUC Trust disallowed for all purposes of this GUC Trust Agreement to the extent provided under the Plan. Each Holder's interest in the GUC Trust is dependent upon such Holder's classification under the Plan and the status of its Allowed Claim.

5.2 Beneficial Interest Only. A Holder's interest in the GUC Trust shall not entitle any Holder to any title in or to, possession of, management of or control of any of the GUC Trust Assets or to any right to call for a partition or division of such GUC Trust Assets or to require an accounting, except as specifically provided herein. Except as expressly provided in this GUC Trust Agreement, a Holder shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Trust Assets.

5.3 Ownership of Beneficial Interests Hereunder. Each Holder of an Allowed General Unsecured Claim shall own a beneficial interest in the GUC Trust (as represented by the GUC Trust Interest(s) issued to such Holder consistent with the Plan). The record holders of the GUC Trust Interests shall be recorded and set forth in a registry maintained by, or at the direction of, the GUC Trustee expressly for such purpose.

5.4 Evidence of Beneficial Interest.

5.4.1. Ownership of a GUC Trust Interest shall not be evidenced by any certificate, security, or receipt (unless otherwise determined by the GUC Trustee) or in any other form or manner whatsoever. Ownership of the GUC Trust Interests shall be maintained on books and records of the GUC Trust maintained by the GUC Trustee, which may be the official claims register maintained in the Chapter 11 Cases. The GUC Trustee shall, upon the written request of a Holder of a beneficial interest, provide reasonably adequate documentary evidence of such Holder's Claim, as indicated on the books and records of the GUC Trust. The expense of providing such documentation shall be borne by the requesting Holder.

5.5 No Right to Accounting. Except as set forth in sections 7.4 and 7.9 of this GUC Trust Agreement, neither the Holders of a GUC Trust Interest nor their successors, assigns, creditors, or any other Person shall have any right to an accounting by the GUC Trustee, and the GUC Trustee shall not be obligated to provide any accounting to any Person. Nothing in this GUC Trust Agreement is intended to require the GUC Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the GUC Trust or as a condition for making any advance, payment, or distribution out of proceeds of GUC Trust Assets.

5.6 No Standing. Except as expressly provided in this GUC Trust Agreement, if at all, a Holder of a General Unsecured Claims shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Trust Assets.

5.7 Requirement of Undertaking. The GUC Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this GUC Trust Agreement, or in any suit against the GUC Trustee for any action taken or omitted by it as GUC Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; provided, however, that the provisions of this section 5.7 shall not apply to any suit by the GUC Trustee.

5.8 Limitation on Transferability. It is understood and agreed that the GUC Trust Interests shall be non-transferable and non-assignable during the term of this GUC Trust Agreement other than if transferred by will, intestate succession, or otherwise by operation of law. Any such Transfer by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the GUC Trustee, and the GUC Trustee may continue to cause the GUC Trust to pay all amounts to or for the benefit of the assigning Holders of Allowed General Unsecured Claims until receipt of proper notification and proof of such Transfer. The GUC Trustee may rely upon such proof without the requirement of any further investigation. Notwithstanding any other provision to the contrary, the GUC Trustee may disregard any purported Transfer of Claims by will, intestate succession or operation of law if sufficient necessary information (as reasonably determined by the

GUC Trustee), including applicable tax-related information, is not provided by such purported transferee or assignee to the GUC Trustee.

5.9 Exemption from Registration. The parties hereto intend that the rights of the Holders of Allowed General Unsecured Claims arising under this GUC Trust Agreement shall not be "securities" under applicable laws, but none of the parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities law. If such rights constitute securities, the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws shall apply to their issuance under the Plan. No party to this GUC Trust Agreement shall make a contrary or different contention.

## ARTICLE VI
## THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Parties Dealing With the GUC Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the GUC Trust or the GUC Trustee shall be entitled to rely on the authority of the GUC Trustee or any of the GUC Trustee's agents to act in connection with the GUC Trust Agreement. No Person that may deal with the GUC Trustee shall have any obligation to inquire into the validity or expediency or propriety of any transaction by the GUC Trustee or any agent of the GUC Trustee.

6.2 Limitation of GUC Trustee's Liability. Anything herein to the contrary notwithstanding, in exercising the rights granted herein, the GUC Trustee shall exercise its best judgment, to the end that the affairs of the GUC Trust shall be properly managed and the interests of all the Holders of Allowed General Unsecured Claims are safeguarded; but the GUC Trustee shall not incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this GUC Trust Agreement, unless the GUC Trustee has acted with gross negligence, fraud or willful misconduct. The GUC Trustee's obligations, duties and responsibilities under the Plan, the Confirmation Order and this GUC Trust Agreement are qualified in their entirety by the availability of and reasonable likelihood of recovery of sufficient assets or Cash to fund the GUC Trustee's activities. Upon the appointment of a successor GUC Trustee and the delivery of the then remaining GUC Trust Assets to the successor GUC Trustee, the predecessor GUC Trustee and any of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer, and successors shall have no further liability or responsibility with respect thereto (other than liabilities arising prior to the cessation of its role as GUC Trustee). A successor GUC Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor, and no successor GUC Trustee shall be in any way liable for the acts or omissions of any predecessor GUC Trustee, unless a successor GUC Trustee expressly assumes such responsibility. A predecessor GUC Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor GUC Trustee for any events or occurrences subsequent to the cessation of its role as GUC Trustee.

6.3 Indemnification. The GUC Trustee and each of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, independent contractors, managers,

members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer and successors (each, an "Indemnified Party") shall be indemnified for, and defended and held harmless against, by the GUC Trust and solely from the GUC Trust Assets, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred without gross negligence, willful misconduct, or fraud on the part of the applicable Indemnified Party (which gross negligence, willful misconduct, or fraud, if any, must be determined by a final, non-appealable order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or this GUC Trust Agreement, as applicable if the applicable Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the GUC Trust or the Beneficiaries. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, willful misconduct, or fraud. The amounts necessary for the indemnification provided in this Section 6.3 (including, but not limited to, any costs and expenses incurred in enforcing the right of indemnification in this Section 6.3) shall be paid by the GUC Trustee out of the GUC Trust Assets. The GUC Trustee shall not be personally liable for the payment of any GUC Trust Fees and Expenses or claim or other liability of the GUC Trust, and no Person shall look to the GUC Trustee personally for the payment of any such expense or liability. The indemnification provided in this Section 6.3 shall survive the death, dissolution, incapacity, resignation or removal of the GUC Trustee, Indemnified Party or the termination of the GUC Trust, and shall inure to the benefit of each Indemnified Party's heirs and assigns.

## ARTICLE VII
## SELECTION, REMOVAL AND COMPENSATION OF GUC TRUSTEE

7.1 Appointment. The GUC Trustee has been selected pursuant to the provisions of the Plan. To effectuate an orderly and efficient transition of the administration, in accordance herewith, of the GUC Trust Assets for the benefit of the Holders of Allowed General Unsecured Claims.

7.2 Term of Service. The GUC Trustee shall serve until the earlier to occur of (a) the termination of the GUC Trust in accordance with this GUC Trust Agreement and the Plan or (b) the GUC Trustee's death, dissolution, incapacity, resignation or removal.

7.3 Removal of a GUC Trustee. Any Person serving as GUC Trustee may be removed and replaced by an order of the Bankruptcy Court and a showing of good cause. The removal shall be effective on the date specified in the order of the Bankruptcy Court. Notwithstanding the removal of the GUC Trustee pursuant to this Section 7.3, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.4 Resignation of GUC Trustee. The GUC Trustee may resign at any time by giving prior written notice of its intention to do so to its counsel and to the Post-Effective Date Debtors, which notice shall be at least thirty (30) days unless the resignation is due to a disability or other incapacity. Without limiting any other reporting or accounting obligations under the Plan or this GUC Trust Agreement, in the event of a resignation, the resigning GUC Trustee shall file with the

Bankruptcy Court a full and complete written accounting of monies and GUC Trust Assets received, disbursed, and held during the term of office of that GUC Trustee. The resignation shall be effective on the later to occur of: (a) the date specified in the notice; or (b) the appointment of a successor made in accordance with Section 7.5; provided, that such resignation shall become effective, at the GUC Trustee's discretion, on the date specified in the GUC Trustee's notice without the appointment of a successor GUC Trustee if the Insurance Coverages (as defined below) terminate for any reason other than the GUC Trustee's unreasonable refusal to renew such Insurance Coverages, and provided further that if a successor GUC Trustee is not appointed or does not accept its appointment or if the appointment of a successor GUC Trustee has not been approved by the Bankruptcy Court within sixty (60) days following delivery of notice of resignation, the resigning GUC Trustee may petition the Bankruptcy Court for the appointment of a successor GUC Trustee. Notwithstanding the resignation of the GUC Trustee pursuant to this Section 7.4, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.5 Appointment of Successor GUC Trustee. Upon the resignation, death, dissolution, incapacity or removal of a GUC Trustee, counsel to the GUC Trustee at the time of such resignation, death, dissolution, incapacity or removal of such GUC Trustee shall file a motion with the Bankruptcy Court seeking to appoint a successor GUC Trustee to fill the vacancy so created, so long as any of the Chapter 11 Cases are pending, or file a notice of appointment of such successor GUC Trustee on the docket of the Chapter 11 Cases, if the Chapter 11 Cases are not pending. Any successor GUC Trustee so appointed pursuant to this Section 7.5 shall consent to and accept in writing the terms of this GUC Trust Agreement and agrees that the provisions of this GUC Trust Agreement shall be binding upon and inure to the benefit of the successor GUC Trustee.

7.6 Powers and Duties of Successor GUC Trustee. A successor GUC Trustee shall have all the rights, privileges, powers, and duties of his, her or its predecessor under this GUC Trust Agreement and the Plan. Notwithstanding anything to the contrary herein, a removed or resigning GUC Trustee shall, when requested in writing by the successor GUC Trustee, execute and deliver an instrument or, instruments conveying and transferring to such successor GUC Trustee under the GUC Trust all the estates, properties, rights, powers, and trusts of such predecessor GUC Trustee.

7.7 Trust Continuance. The death, resignation, dissolution, incapacity or removal of the GUC Trustee shall not terminate the GUC Trust or revoke any then-existing agency created pursuant to this GUC Trust Agreement or invalidate any action theretofore taken by the GUC Trustee.

7.8 Compensation and Costs of Administration. The GUC Trustee shall receive fair and reasonable compensation for its services as determined by GUC Trust Agreement between the GUC Trustee and the Creditors' Committee either on an hourly basis at the GUC Trustee's standard hourly billing rates or a flat monthly fee, plus all reasonable and documented costs and expenses, which shall be charged against and paid out of the GUC Trust Assets without further Bankruptcy Court approval or order. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the GUC Trustee (or professionals who may be employed by the GUC Trustee in administering the GUC Trust, in carrying out their responsibilities under this GUC Trust Agreement, or in any manner connected, incidental, or related thereto) shall be paid from the applicable GUC Trust Assets prior to any distribution to the Holders of Allowed General Unsecured

Claims without further Bankruptcy Court approval or order (subject to the limitations set forth in this GUC Trust Agreement and the Plan).

7.9 Periodic Reporting; Filing Requirements.

7.9.1. The GUC Trustee shall provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning GUC Trust administration.

7.9.2. The GUC Trustee shall file tax returns for the GUC Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and any other applicable laws or regulations with the Holders of Allowed General Unsecured Claims treated as the grantors of the GUC Trust for U.S. federal income tax purposes in respect of their GUC Trust Interests. In addition, the GUC Trustee shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The GUC Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the GUC Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

7.9.3. The tax returns filed by the GUC Trustee shall report all GUC Trust earnings for the taxable year being reported. The "taxable year" of the GUC Trust shall be the "calendar year" as those terms are defined in Section 441 of the IRC.

7.10 Confidentiality. Except as required in the performance of its duties, the GUC Trustee shall, while serving as GUC Trustee under this GUC Trust Agreement, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the GUC Trust Assets relate or of which he has become aware in its capacity as GUC Trustee.

## ARTICLE VIII
## MAINTENANCE OF RECORDS

8.1 The GUC Trustee shall maintain accurate records of the administration of GUC Trust Assets, including receipts and disbursements and other activity of the GUC Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the GUC Trust, if applicable. To the extent of any General Unsecured Claims reflected thereon, the Claims register may serve as the GUC Trustee's register of beneficial interests held by Holders of Claims. The books and records maintained by the GUC Trustee and any records of the Debtors transferred to the GUC Trust may be disposed of by the GUC Trustee at the later of (i) such time as the GUC Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the GUC Trust or Holders of Claims and (ii) upon the termination and completion of the winding down of the GUC Trust.

## ARTICLE IX
## DURATION OF GUC TRUST

9.1 Duration. This GUC Trust Agreement shall remain and continue in full force and effect until the GUC Trust is terminated in accordance with the provisions of this GUC Trust Agreement and the Plan.

9.2 Termination of the GUC Trust. The GUC Trustee and the GUC Trust shall be discharged or terminated, as the case may be, at such time as: (a) all distributions required to be made by the GUC Trustee to the Holders of Allowed General Unsecured Claims have been made, but in no event shall the GUC Trust be terminated later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six (6) months before the end of the preceding extension), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the GUC Trust Assets. The GUC Trust may not be terminated at any time by the Holders of Claims. In connection with the termination of the GUC Trust, notwithstanding other provisions hereof, including section 3.1, any remaining GUC Trust Assets that the GUC Trustee determines, in its sole discretion, are of inconsequential value or otherwise insufficient to support the cost of a distribution, may be transferred by the GUC Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the IRC.

9.3 Continuance of GUC Trust for Winding Up. After the termination of the GUC Trust and for the purpose of liquidation and winding up the affairs of the GUC Trust, the GUC Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the GUC Trust. Subject to the provisions of Section 8.1 hereof, after the termination of the GUC Trust, the GUC Trustee, for a time, may retain or cause to be retained certain books, records, lists of Holders, and certificates and other documents and files that shall have been delivered to or created by the GUC Trustee. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the GUC Trust and final distribution of the GUC Trust, the GUC Trustee shall have no further duties or obligations hereunder.

## ARTICLE X
## MISCELLANEOUS

10.1 Books and Records. The GUC Trustee shall be provided with reasonable access, during normal business hours, to the Debtors' or the Post-Effective Date Debtors' (as applicable) personnel and books and records upon request in order to allow the GUC Trustee to discharge its duties in reconciling and prosecuting objections to General Unsecured Claims.

10.2 Preservation of Privilege. In connection with the rights and claims that constitute GUC Trust Assets, any attorney-client privilege, work-product doctrine, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the GUC Trust pursuant to the terms of the Plan or otherwise shall vest in the GUC Trustee and his

representatives, and the GUC Trustee is authorized to take all necessary actions to effectuate the transfer of such privileges, as necessary. The GUC Trustee's receipt of such privileges shall not operate as a waiver of any other privileges or immunities possessed or retained by the Debtors or Post-Effective Date Debtors (as applicable).

10.3 Notices. Unless otherwise expressly provided herein, all notices to be given to Holders of Claims may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by the GUC Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the GUC Trust shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery (if receipt is confirmed) addressed as follows:

If to the GUC Trust:

With a copy to: Pachulski Stang Ziehl & Jones LLP
Bradford J. Sandler and Paul J. Labov
780 Third Avenue, 34th Floor
New York, NY 10017
bsandler@pszjlaw.com
plabov@pszjlaw.com

or to such other address as may from time to time be provided in written notice by the GUC Trustee.

10.4 No Bond / Insurance. Notwithstanding any state law to the contrary, the GUC Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction, unless the GUC Trustee decides in its reasonable judgment to obtain such bond or other security. The GUC Trustee is hereby authorized, but not required to obtain all reasonable insurance coverage for itself, its agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the GUC Trustee and its agents, representatives, employees or independent contractors under this GUC Trust Agreement and the Plan ("Insurance Coverages"). The cost of any such Insurance Coverage shall be a GUC Trust Fee and Expense and paid out of the GUC Trust Assets.

10.5 Governing Law. This GUC Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (excluding conflict of laws rules), including all matters of validity, construction and administration; provided, however, that there shall not be applicable to the GUC Trust, the GUC Trustee or this GUC Trust Agreement, (a) the provisions of Section 3540 of Title 12 of the Delaware Code and (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof, (i) the filing with any court or governmental body or agency of trustee accounts or schedule of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents or employees of a trust, (v) the allocation of receipts and expenditures to income and principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees.

10.6 Successors and Assigns. This GUC Trust Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

10.7 Headings. The various headings of this GUC Trust Agreement are inserted for convenience only and shall not affect the meaning or understanding of this GUC Trust Agreement or any provision hereof.

10.8 Cumulative Rights and Remedies. The rights and remedies provided in this GUC Trust Agreement are cumulative and not exclusive of any rights and remedies under law or in equity.

10.9 No Execution. All funds in the GUC Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Holder of an Allowed General Unsecured Claim, and no such Holder or any other Person can execute upon, garnish or attach the GUC Trust Assets or the GUC Trust in any manner or compel payment from the GUC Trust except by Final Order of the Bankruptcy Court. Payment will be solely governed by this GUC Trust Agreement and the Plan.

10.10 Intention of Parties to Establish Grantor Trust. This GUC Trust Agreement is intended to create a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust. Consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684, the GUC Trust shall be treated as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the IRC. As such, for U.S. federal income tax purposes, the Holders of Allowed General Unsecured Claims will be treated as both the grantors and the deemed owners of the GUC Trust.

10.11 Tax Treatment of Reserves for Disputed Claims. The GUC Trustee shall maintain reserves for Disputed Claims as provided in the Plan or otherwise in the GUC Trustee's sole discretion. The GUC Trustee may, in the GUC Trustee's sole discretion, determine the best way to report for tax purposes with respect to any reserve for any Disputed Claims of Holders of Allowed General Unsecured Claims, including, but not limited to, (i) filing a tax election to treat any and all reserves for Disputed Claims as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Regulations Section 1.468B-9 for U.S. federal income tax purposes rather than to tax such reserve as a part of the GUC Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report any reserve for Disputed Claims as a DOF, the GUC Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due. For the avoidance of doubt, all of the GUC Trust's income shall be treated as subject to tax on a current basis consistent with Revenue Procedure 82-58, 1982-2, C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684.

10.12 Amendment. The GUC Trustee may, from time to time, modify, supplement, or amend this GUC Trust Agreement but only to clarify any ambiguity or inconsistency, or render the GUC Trust Agreement in compliance with its stated purposes, and only if such amendment does not materially and adversely affect the interests, rights, treatment, or distributions of any Holder of an Allowed General Unsecured Claim. The GUC Trustee, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this GUC Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

10.13 Waiver. No failure by any Party to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

10.14 Severability. If any term, provision, covenant or restriction contained in this GUC Trust Agreement is held by a court of competent jurisdiction or other authority to be invalid, void,

unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this GUC Trust Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.15 Counterparts and Facsimile Signatures. This GUC Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

10.16 Jurisdiction. The Bankruptcy Court shall have jurisdiction regarding the GUC Trust, the GUC Trustee, and the GUC Trust Assets, including the determination of all disputes arising out of or related to administration of the GUC Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters arising out of or related to this GUC Trust Agreement or the administration of the GUC Trust. The parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this GUC Trust Agreement, then the provisions of this GUC Trust Agreement shall have no effect on and shall not control, limit or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this GUC Trust Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

[*The remainder of this page is intentionally left blank.*]

IN WITNESS WHEREOF, the parties have executed this GUC Trust Agreement as of the day and year written above.

**DEBTORS**:
Cyxtera Technologies, Inc.
[_____]

By: _____
Name: Victor Semah
Title: Chief Legal Counsel

**TRUSTEE**:

_____, not individually, but solely in its capacity as GUC Trustee of the GUC Trust

By: _____
Name: _____
Title: Managing Director

# Exhibit E

## Plan Administrator Agreement

Certain documents, or portions thereof, contained or to be contained in this **Exhibit E** and the Plan Supplement remain subject to continued review, as applicable, by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, and the final version of any such document may contain material differences from the version filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The respective rights of the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, are expressly reserved, subject to the terms and conditions set forth in the Plan, the RSA, and the Purchase Agreement (including certain consent and approval rights), to alter, amend, modify, or supplement the Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan, the RSA, and the Purchase Agreement, or by order of the Bankruptcy Court; *provided* that if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a redline of such document with the Bankruptcy Court.

# PLAN ADMINISTRATOR AGREEMENT

This Plan Administrator Agreement (the "***Agreement***") is made [●], 2023, by and among Cyxtera Technologies, Inc.; Cyxtera Communications, LLC; Cyxtera Canada TRS, ULC; Cyxtera Canada, LLC; Cyxtera Communications Canada, ULC; Cyxtera Data Centers, Inc.; Cyxtera DC Holdings, Inc.; Cyxtera DC Parent Holdings, Inc.; Cyxtera Digital Services, LLC; Cyxtera Employer Services, LLC; Cyxtera Federal Group, Inc.; Cyxtera Holdings, LLC; Cyxtera Management, Inc.; Cyxtera Netherlands B.V.; Cyxtera Technologies Maryland, Inc.; and Cyxtera Technologies, LLC (each a "***Debtor***" and collectively, the "***Debtors***") and PIRANATE Consulting Group, LLC, as administrator of the Plan (the "***Plan Administrator***"). This Agreement sets forth, among other things, the scope of the services to be provided by the Plan Administrator. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 649] (as may be altered, amended, or modified from time to time, the "***Plan***").[1]

RECITALS:

A. WHEREAS, on June 4, 2023 (the "***Petition Date***"), the Debtors commenced with the United States Bankruptcy Court for the District of New Jersey (the "***Bankruptcy Court***") voluntary cases (the "***Chapter 11 Cases***") pursuant to chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***").

B. WHEREAS, on November 3, 2023, the Debtors filed the Plan.

C. WHEREAS, pursuant to the Plan, as of the Effective Date and solely in the event the Sale Transaction is consummated, the Plan Administrator will be appointed as Plan Administrator to implement the Plan, make distributions to Holders of certain Allowed Claims, and wind down, dissolve, and liquidate the Debtors' Estates, in each case, for the benefit of the Holders of Allowed Claims other than Holders of General Unsecured Claims (the "***Beneficiaries***").

D. WHEREAS, pursuant to the Plan, once appointed, the Plan Administrator shall have the authority and right on behalf of the Post-Effective Date Debtors, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement the provisions of the Plan.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

1. *Acceptance of Appointment*. The Debtors hereby appoint PIRINATE Consulting Group, LLC to serve as Plan Administrator, and PIRANATE Consulting Group, LLC accepts its appointment as Plan Administrator and agrees to oversee and provide the services to be provided by the Plan Administrator pursuant to the Plan and the Confirmation Order, and as set forth herein

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

(the "***Services***"). Notwithstanding the date of execution of this Agreement, this Agreement shall only become effective on the Effective Date of the Plan.

2. *Duties, Powers, and Rights of Plan Administrator*. From and after the Effective Date, but subject to the Plan, the Plan Administrator shall act for the Debtors and the Beneficiaries in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof. The Plan Administrator shall have all duties, powers, and rights set forth herein, in the Plan and in the Confirmation Order, including the following:

(i) subject to Bankruptcy Court approval when necessary, except to the extent Claims have been previously Allowed, control and effectuate the Claims reconciliation process, including to object to, seek to subordinate, compromise or settle any and all Claims or Interests against or in the Debtors, other than with respect to the General Unsecured Claims;

(ii) following the Effective Date, the Plan Administrator, or one or more designees thereof, shall serve as the member(s) or director(s) of any such dissolved board in the event that the Plan Administrator deems doing so necessary at any time following the Effective Date in order to effectuate the provisions of the Plan. The Plan Administrator shall be authorized to file on behalf of the Post-Effective Date Debtors, certificates of dissolution and any and all other corporate and company documents necessary to effectuate the Wind Down without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, the board of directors, or board of directors or similar governing body of the Debtors or Post-Effective Date Debtors;

(iii) make distributions to Holders of Allowed Claims in accordance with the Plan, other than with respect to Holders of Allowed General Unsecured Claims;

(iv) exercise its reasonable business judgment to effectuate the Wind Down, sell, liquidate, operate, use, acquire, or dispose of property (including the liquidation, sale and/or abandonment of the remaining assets after consummation of the Sale Transaction) of the Post-Effective Date Debtors under the Plan and in accordance with applicable law as necessary to maximize distributions to Holders of Allowed Claims;

(v) prepare, file, and prosecute any necessary filings and/or pleadings with the Bankruptcy Court to carry out the duties of the Plan Administrator as described herein;

(vi) subject in all respects to Articles IV.E and VIII of the Plan and to the extent not otherwise expressly waived relinquished, exculpated, released, compromised, or settled, prosecute all Causes of Action retained by the Post-Effective Date Debtors after the Effective Date on behalf of the Post-Effective Date Debtors, elect not to pursue any such Causes of Action, and determine whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Debtors' Estates;

(vii) make payments to existing retained professionals (consistent with the terms of any Bankruptcy Court order approving such retention and subject to any applicable Bankruptcy Court approval requirements), as well as other professionals who may be engaged by the Plan Administrator after the Effective Date;

(viii) retain professionals to assist in performing its duties under the Plan pursuant to Section 5 hereof;

(ix) appoint officers as necessary to effectuate the Wind Down in accordance with the Plan;

(x) maintain the books and records and accounts of the Debtors and the Post-Effective Date Debtors;

(xi) incur and pay, reasonable and necessary documented expenses in connection with the performance of duties under the Plan, including the reasonable and documented fees and expenses of professionals retained by the Plan Administrator;

(xii) prepare, or cause to be prepared, and file or cause to be filed, as necessary, all final or otherwise required federal, state, and local tax returns for the Debtors and pay the tax liabilities of the Debtors or Post-Effective Date Debtors due and payable after the Effective Date;

(xiii) prepare and file any and all informational returns, reports, statements, returns or disclosures relating to the Debtors and the Post-Effective Date Debtors that are required thereunder, by any Governmental Unit or applicable law;

(xiv) pay statutory fees and file reports in accordance with Article XII.D of the Plan; and

(xv) perform other duties and functions that are consistent with the implementation of the Plan

3. *Reporting by the Plan Administrator*. On a semiannual basis, the Plan Administrator shall provide or make available a written report and account to the AHG (or any entity that was a member thereof before the Effective Date), which report and account sets forth (i) the financial statements of the Post-Effective Date Debtors at the end of each period and (ii) the receipts and disbursements of the Post-Effective Date Debtors for such period. Notwithstanding, and without limitation of, the foregoing, the Plan Administrator shall respond to reasonable requests for information regarding distributions, the Wind-Down and the Claims reconciliation process that may be made by the AHG Advisors.

4. *No Other Duties*. Other than the duties and obligations of the Plan Administrator specifically set forth in this Agreement, the Plan, or the Confirmation Order, the Plan Administrator shall have no duties or obligations of any kind or nature with respect to its position.

5. *Retention of Professionals*. The Plan Administrator may hire (or continue to engage previously hired Debtor professionals) attorneys, accountants and other professionals as may be required or appropriate in connection with its duties herein, and pay reasonable compensation to such advisors. Any professionals retained by the Plan Administrator, shall be entitled to reasonable compensation for services rendered and reimbursement of reasonable and documented fees, costs and expenses incurred. The payment of the fees, costs and expenses of the Plan Administrator and its retained professionals incurred after the Effective Date shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

provided, however, that any disputes related to such fees, costs and expenses shall be brought before the Bankruptcy Court.

6. *Insurance*. The Plan Administrator shall be authorized to obtain all reasonably necessary insurance coverage and shall be reimbursed pursuant to Section 8 hereof.

7. *Fees*. The fees of the Plan Administrator shall be $25,000.00 per month until this Agreement is terminated pursuant to Sections 9 and 10 hereof (collectively, the "***Fees***"). The initial payment of $25,000.00 shall be made within ten (10) business days following the Effective Date, and each successive payment shall be made on the same date (or next subsequent business day) of each month going forward. The Fees shall be payable out of the Wind-Down Reserve.

8. *Expenses*. In performance of the Services, the reasonable and documented out of pocket expenses of the Plan Administrator, including, for the avoidance of doubt, any insurance policy obtained by the Plan Administrator in connection with the Services, shall be reimbursed, payable from the Wind-Down Reserve.

9. *Service of Plan Administrator*. The Plan Administrator shall serve until the earlier to occur of (a) (i) the Estates have been fully administered and all of the Post-Effective Date Debtors' assets have been liquidated or abandoned, (ii) all duties and obligations of the Plan Administrator have been fulfilled, (iii) all distributions required to be made under the Plan and this Agreement have been made, and (iv) a Final Order has been entered by the Bankruptcy Court closing the last of the Chapter 11 Cases; or (b) the Plan Administrator's death, resignation, dissolution, incapacity or removal. Subject to Section 10, the Plan Administrator may resign at any time by giving at least forty-five (45) days' prior written notice of its intention to do so to the United States Trustee, the Bankruptcy Court and the AHG Advisors. Upon the occurrence of any event described in the foregoing clause (a) or (b), this Agreement shall terminate and no further Fees shall be due to the Plan Administrator; provided that the Plan Administrator shall be entitled to the reimbursement of reasonable expenses incurred prior to such termination in accordance with Section 8 of this Agreement.

10. *Removal of Plan Administrator*. The Plan Administrator may be removed and replaced at any time for cause. Any Beneficiary, on notice and hearing before the Bankruptcy Court, may seek removal of the Plan Administrator for cause.[2] The Plan Administrator shall be entitled to recover its reasonable and documented fees and expenses (including legal fees) from any party that unsuccessfully attempts to remove the Plan Administrator for cause. Such removal, if any, shall be effective on the date specified in the order approving removal by the Bankruptcy Court. Notwithstanding the removal of the Plan Administrator pursuant to this Section 10, the rights of the resigning Plan Administrator under this Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Plan Administrator following the effectiveness of such resignation.

[2] For purposes of this Agreement, the term "for cause" shall mean: (i) the commission of a crime under the laws of the United States or any state thereof involving fraud, theft, false statements or other similar acts, or the commission of any crime that is a felony (or a comparable classification in a jurisdiction that does not use such terms) under such laws; or (ii) the willful, grossly negligent or repeated failure to perform any material employment-related duties.

11. *Resignation of Plan Administrator*. In the event of a resignation, the Plan Administrator shall continue to serve until the date that is forty-five (45) days after the date such notices is filed with the Bankruptcy Court and served on the United States Trustee and the advisors to the AHG. Notwithstanding the resignation of the Plan Administrator pursuant to this Section 11, the rights of the resigning Plan Administrator under this Agreement with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning Plan Administrator following the effectiveness of such resignation. Notwithstanding any other provision herein, upon the resignation of the Plan Administrator (other than a resignation for cause), the undersigned Plan Administrator shall reasonably assist and cooperate in effecting the assumption of the duties by any successor Plan Administrator and continue to serve in such capacity until such time as (a) a successor Plan Administrator is identified and accepts the appointment as Plan Administrator and (b) notice is provided to the Bankruptcy Court of such successor Plan Administrator pursuant to this Section 11; provided that in no event shall the outgoing Plan Administrator be required to continue to serve for a period longer than forty-five (45) days following its resignation.

12. *Appointment of Successor Plan Administrator*. Upon the death, resignation, dissolution, incapacity or removal of a Plan Administrator, the Plan Administrator shall recommend a successor Plan Administrator, which is acceptable to Beneficiaries that hold a majority of the First Lien Claims, to be appointed by the Bankruptcy Court. Upon the death, resignation, dissolution, incapacity or removal of a Plan Administrator, the Bankruptcy Court upon request or on its own motion shall appoint a successor Plan Administrator on an interim or permanent basis. Any successor Plan Administrator so appointed shall consent to and accept in writing the terms of this Agreement and agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Plan Administrator.

13. *Powers and Duties of Successor Plan Administrator*. For the avoidance of doubt, a successor Plan Administrator shall have all the rights, privileges, powers, and duties of its predecessor under this Agreement and the Plan.

14. *Indemnification*. In addition to any other indemnification provided to the Plan Administrator, the Plan Administrator (in its capacity as such) shall be indemnified and held harmless as set forth in Article IV.D.4 of the Plan. Such indemnification shall survive the termination of this Agreement.

15. *Plan Provisions*. In connection with all actions taken in its capacity as Plan Administrator, the Plan Administrator shall be entitled to rely upon the applicable exculpation, release, and indemnification and limitation of liability provisions set forth in any organizational document of the Debtors, this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein, the Plan Administrator shall not be entitled to any release, exculpation, or indemnification if the Plan Administrator is determined to have engaged in fraud, gross negligence, or willful misconduct as determined by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

16. *Reliance by Plan Administrator*. To the fullest extent permitted by applicable law, the Plan Administrator may rely, and shall be fully protected in acting or refraining from acting if it relies, upon any resolution, statement, certificate, instrument, opinion, report, notice, request,

consent, order, or other instrument or document that the Plan Administrator reasonably believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of e-mails or facsimiles, to have been sent or the Plan Administrator reasonably believes to have been sent by the proper party or parties, and the Plan Administrator may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. To the fullest extent permitted by applicable law, the Plan Administrator may consult with counsel, accountants, financial advisors, and other professionals with respect to matters in their area of expertise, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or not taken by the Plan Administrator (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). To the fullest extent permitted by applicable law, the Plan Administrator shall be entitled to rely upon the advice of such professionals in acting or failing to act, and shall not be liable for any act taken or not taken in reliance thereon (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). To the fullest extent permitted by applicable law, the Plan Administrator shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning this Agreement, the Plan, or any other document executed in connection herewith or therewith, and the Plan Administrator shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon.

17. *Effect of Termination; Survival*. Upon termination of this Agreement, the Plan Administrator shall have no further duties or obligations hereunder or as Plan Administrator, except as specifically provided herein. For the avoidance of doubt, any other provision in the Agreement, which, by its terms, specifically survives termination of the Agreement, shall survive termination of this Agreement.

18. *Headings*. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or of any term or provision hereof.

19. *Amendment; Waiver*. The Plan Administrator, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. No failure by any party hereto to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

20. *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the rules of conflict of laws of the State of New York or any other jurisdiction.

21. *Retention of Jurisdiction*. The Bankruptcy Court shall retain jurisdiction over this Agreement.

22. *Conflict with Plan*. This Agreement incorporates and is subject to the provisions of the Plan. To that end, the Plan Administrator shall have full power and authority to take any action consistent with the purposes and provisions of the Plan. In the event that the provisions of this Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control. Notwithstanding anything to the contrary contained herein, all fees, costs, expenses, and payments hereunder shall be subject in all respects to the provisions of the Plan.

23. *Severability*. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make such provision enforceable, or, if necessary, this Agreement shall be deemed to be amended to delete the unenforceable provision or portion thereof. In the event any provision is deleted or amended, the remaining provisions shall remain in full force and effect. Notwithstanding the foregoing, the parties recognize and agree that this Agreement is to be interpreted and applied in such manner as to, as nearly as possible, give effect to the parties' intent to all provisions hereof, including, without limitation, such provisions as may be declared to be unenforceable.

24. *Integration*. This Agreement (together with the Plan and the Confirmation Order) sets forth in full the terms of agreement between the parties with respect to the transactions contemplated herein, superseding all other discussions, promises, representations, warranties, agreements and understandings, whether written or oral, between the parties with respect thereto.

25. *Notices*. Unless otherwise expressly specified or permitted by the terms of the Plan, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or email transmission (and confirmed by mail), in any such case addressed as follows:

If to the Plan Administrator: PIRINATE Consulting Group, LLC
5 Canoe Brook Drive
Livingston, New Jersey 07039

If to the Post-Effective Date Debtors: Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Edward O. Sassower, Christopher Marcus, Derek I. Hunter
E-mail addresses: esassower@kirkland.com, christopher.marcus@kirkland.com
derek.hunter@kirkland.com

If to the AHG or the AHG Advisors: Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Scott J. Greenberg, Steven Domanowski, Stephen D. Silverman
Email: sgreenberg@gibsondunn.com
sdomanowski@gibsondunn.com

silverman@gibsondunn.com

26. *Successors and Assigns*. No party hereto shall have the right to assign its rights hereunder.

27. *Counterparts; Effectiveness*. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same agreement. Provided the Effective Date has occurred, this Agreement shall become effective when each party hereto shall have received counterparts thereof signed by all the other parties hereto. The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or e-mail transmission. Such facsimile or e-mail signature shall be treated in all respects as having the same effect as an original signature.

[*Signature pages follow*.]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers.

DEBTORS:

By:

_____

Name: Victor Semah
Title: Chief Legal Counsel

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers.

PLAN ADMINISTRATOR:

By: PIRINATE Consulting Group, LLC

_____

Name: Eugene I. Davis
Title: Chairman and Chief Executive Officer

**Exhibit F**

**Purchase Agreement**

Filed as Exhibit A to the *Notice of Sale Transaction* [Docket No. 648].

# Appendix “E”

**ASSET PURCHASE AGREEMENT**

**DATED AS OF OCTOBER 30, 2023**

**BY AND AMONG**

**COLOGIX CANADA, INC., AS PURCHASER,**

**AND**

**CYXTERA COMMUNICATIONS CANADA, ULC,**

**AS SELLER**

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# ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of October 30, 2023, is made by and among Cologix Canada, Inc., a Nova Scotia corporation ("Purchaser"), Cyxtera Communications Canada, ULC, an entity organized under the Laws of the province of Alberta ("Seller"). Purchaser and Seller are referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used herein shall have the meanings set forth herein, including Article XI.

WHEREAS, Seller is an indirect wholly-owned Subsidiary of Cyxtera Technologies Inc., a Delaware corporation (as in existence on the date hereof, as a debtor-in-possession and a reorganized debtor, as applicable, "CTI");

WHEREAS, on June 4, 2023 (the "Petition Date"), CTI, together with certain of CTI's Affiliates, commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court"), which cases are jointly administered for procedural purposes under *In re Cyxtera Technologies, Inc.*, Case No. 23-14853 (JKS) (Bankr. D.N.J. June 4, 2023) (collectively, the "Bankruptcy Cases");

WHEREAS, on June 6, 2023, the Foreign Representative, Seller, and certain of its Affiliates obtained an Initial Recognition Order (Foreign Main Proceeding) and Supplemental Order (Foreign Main Proceeding) from the CCAA Court (the "CCAA Proceeding") and thereafter have obtained further recognition Orders from CCAA Court recognizing Orders made by the Bankruptcy Court granted in the Bankruptcy Cases; and

WHEREAS, Purchaser desires to purchase the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller desires to sell, convey, assign, and transfer to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and the Sale Order.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants, and agreements set forth herein, and intending to be legally bound hereby, the Parties hereby agree as follows:

## ARTICLE I
## PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order, at the Closing, Seller shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from Seller, all of Seller's right, title and interest in and to, as of the Closing, the Acquired Assets, free and clear of all Encumbrances other than

Permitted Encumbrances. "Acquired Assets" means all of the right, title, and interest of Seller, as of the Closing in and to, the following assets of Seller:

(a) (i) the Contracts listed on Schedule 1.1(a), (ii) the Transferred Customer Contracts, (iii) any purchase orders, service orders, sales orders, and similar instruments entered into by Seller prior to the Closing with respect to any Contract in clause (i) or (ii), (iv) any other Contracts entered into by Seller with respect to the Transferred Business prior to the Closing with the written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed), and (v) the Acquired Leases ((i) through (v), the "Assigned Contracts");

(b) all prepaid or deferred charges and expenses, including all lease and rental payments, in each case, that have been prepaid by any Seller with respect to any Acquired Leased Real Property;

(c) the leased real property listed on Schedule 1.1(c) (the "Acquired Leased Real Property" and the lease pursuant to which Seller holds its interest in such Acquired Leased Real Property, an "Acquired Lease"), including any Leasehold Improvements and all permanent fixtures, improvements, and appurtenances thereto;

(d) all tangible assets of Seller located at any Acquired Leased Real Property and any such tangible assets on order to be delivered to any Acquired Leased Real Property, other than those assets set forth on Schedule 1.1(d); and

(e) to the extent transferable, all rights of Seller under any permits, permissions, licenses, authorizations and other similar items, in each case, arising from a local Governmental Body having jurisdiction over, and only to the extent relating solely to the operation or use of the Acquired Leased Real Property.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign, convey or deliver, and Seller shall retain all right, title and interest to, in and under any properties, rights, interests and other assets of Seller other than the Acquired Assets (collectively, the "Excluded Assets").

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Sale Order, effective as of the Closing, in addition to the payment of the Cash Payment in accordance with Section 2.1, Purchaser shall irrevocably assume from Seller (or with respect to Taxes, if applicable, from such Seller's applicable Affiliate) (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Seller (or with respect to Taxes, if applicable, Seller's applicable Affiliate) shall irrevocably transfer, assign, convey, and deliver to Purchaser, only the following Liabilities, without duplication and only to the extent not paid prior to the Closing (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of any Seller under the Assigned Contracts that first arise or become due from and after the Closing;

(b) all Liabilities (including all government charges or fees) arising out of the conduct of the Transferred Business or the ownership or operation of the Acquired Assets, in each case, by Purchaser on or after the Closing Date;

(c) all Transfer Taxes required to be paid under this Agreement;

(d) without duplication: (i) the Pro Rata Portion of all Taxes with respect to the Acquired Assets for the Straddle Period, and (ii) all Taxes with respect to the Acquired Assets for any taxable period first beginning on or after the Closing Date;

(e) all Liabilities agreed to be assumed by Purchaser in writing or for which Purchaser has agreed to be responsible in accordance with this Agreement; and

(f) all Liabilities relating to Transferred Employees and all Liabilities and obligations assumed by Purchaser under Section 6.1.

1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, any Seller of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Closing, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities").

1.5 Assigned Contracts.

(a) Assumption and Assignment of Executory Contracts. Seller shall take such actions in the Bankruptcy Case and the CCAA Proceedings as are reasonably necessary to effectuate the assumption and assignment to Purchaser of the Assigned Contracts hereunder in accordance with the Bankruptcy Code and the CCAA.

(b) Non-Assignment.

(i) Notwithstanding anything to the contrary in this Agreement, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract is rejected by a Seller or its Affiliates or terminated by a Seller, its Affiliates or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption.

(ii) Notwithstanding anything to the contrary in this Agreement, to the extent an Acquired Asset requires a Consent or Governmental Authorization (other than, and in addition to and determined after giving effect to, any Order of the Bankruptcy Court, including the Sale Order) in order to permit the sale or transfer to Purchaser of the applicable Seller's right, title and interest in and to such asset, Seller shall cooperate with Purchaser and use commercially reasonable efforts in pursuing such Consent or Governmental Authorization. If one or more such Consent or Governmental Authorization

has not been obtained prior to such time as such right, title and interest is to be transferred by Purchaser as an Acquired Asset hereunder, such asset shall not be an Acquired Asset hereunder and shall not be transferred to, or received by, Purchaser. If any Acquired Asset is deemed not to be assigned pursuant to this clause (ii), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six months following the Closing (or the closing of the Bankruptcy Cases or dissolution of the applicable Seller(s), if earlier), Seller and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of any Seller's rights and obligations with respect to any such Acquired Asset, under which (1) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Seller or their respective Affiliates or any direct costs associated with the retention and maintenance of such Acquired Asset incurred by any Seller or its Affiliates) with respect to such Acquired Asset with respect to which the Consent or Governmental Authorization has not been obtained and (2) Purchaser shall assume and timely discharge any related burden and obligation with respect to such Acquired Asset. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Acquired Asset after the Closing, Seller's right, title and interest in and to such Acquired Asset shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement and the Sale Order. Notwithstanding anything herein to the contrary, no Seller will be obligated to pay any consideration therefor to any third party from whom Consent or Governmental Authorization is requested or to initiate any litigation to obtain any such Consent or Governmental Authorization.

## ARTICLE II
## CONSIDERATION; PAYMENT; CLOSING

2.1 Consideration; Payment.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of Assumed Liabilities and (ii) a cash payment of $10,000,000, subject to Section 9.4(d) (the "Cash Payment").

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller the Cash Payment (the "Closing Date Payment"). The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party to (or for the benefit of) whom such payment is to be made at least two Business Days prior to the date such payment is to be made.

2.2 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities in accordance with this Agreement (the "Closing") will take place by telephone conference and electronic exchange of

documents (or, if the Parties agree to hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022) at 10:00 a.m. Eastern Time on the second Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing), or at such other place and time as the Parties may agree in writing. The date on which the Closing actually occurs is referred to herein as the "Closing Date."

2.3 Closing Deliveries by Seller. At or prior to the Closing, Seller shall deliver to Purchaser:

(a) a bill of sale and assignment and assumption agreement substantially in the form of Exhibit A (the "Assignment and Assumption Agreement") duly executed by Seller;

(b) any joint elections contemplated by Section 9.4(e);

(c) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Seller certifying that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied.

2.4 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) Seller:

(a) the Closing Date Payment;

(b) the Assignment and Assumption Agreement, duly executed by Purchaser;

(c) any joint elections contemplated by Section 9.4(e);

(d) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied; and

(e) the PST owing under the PSTA. The Parties will reasonably cooperate in determining the amount of PST with respect to the Acquired Assets so as to permit each Party to comply with its respective obligations under the PSTA; provided that if the Parties are unable to agree prior to the Closing, the Closing will still occur and Purchaser shall continue to be responsible for such PST.

2.5 Withholding. Purchaser shall not be entitled to deduct and withhold any Taxes from any amounts otherwise payable pursuant to this Agreement, such amounts as may be required to be deducted and withheld therefrom or with respect thereto under the Tax Code or other applicable Law; provided that prior to any such deduction and withholding, Purchaser shall use commercially reasonable efforts to provide Seller with five (5) Business Days' written notice of its intent to deduct and withhold amounts from any such payments. If Purchaser is required under applicable Law to deduct or withhold any taxes from any payment in connection with or related to this Agreement, the sum payable by Purchaser shall be increased as necessary so that after all required

deductions have been made, Seller receives an amount equal to the sum it would have received had no such deductions been made.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES OF SELLER

Except as (i) disclosed in the forms, reports, schedules, statements, exhibits and other documents filed with the SEC by CTI in respect of Seller and its business to the extent publicly available on the SEC's EDGAR database (other than any disclosures set forth under the headings "Risk Factors" or "Forward-Looking Statements" and any other disclosures included therein to the extent they are forward-looking in nature), (ii) disclosed in any forms, statements or other documents filed with the Bankruptcy Court, or (iii) set forth in the Schedules delivered by Seller concurrently herewith (each, a "Schedule" and collectively, the "Schedules"), and subject to Section 10.10, Seller represent and warrant to Purchaser as of the date hereof as follows:

3.1 Organization and Qualification. Except as set forth in Schedule 3.1, Seller is an unlimited liability corporation, duly organized, validly existing, and in good standing (if such concept is applicable) under the Laws of the jurisdiction of its incorporation or formation.

3.2 Authorization of Agreement. Subject to requisite Bankruptcy Court approvals:

(a) Seller has all necessary power and authority to execute and deliver this Agreement and the other Transaction Agreements to which Seller is a party and to perform its obligations hereunder and to consummate the Transactions;

(b) the execution, delivery and performance by Seller of this Agreement and the other Transaction Agreements to which Seller is a party, and the consummation by Seller of the Transactions, subject to requisite Bankruptcy Court approvals and CCAA Orders being granted, have been duly authorized by all requisite corporate action, limited liability company action or limited partnership action on the part of Seller, and no other organizational proceedings on Seller's part are necessary to authorize the execution, delivery and performance by Seller of this Agreement or the other Transaction Agreements and the consummation by it of the Transactions; and

(c) this Agreement and the other Transaction Agreements to which Seller is a party have been, or will be, duly executed and delivered by Seller and, assuming due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitutes, or will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with its and their terms, except that such enforceability (a) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (b) is subject to general principles of equity, whether considered in a proceeding at law or in equity (collectively, the "Enforceability Exceptions").

3.3 Conflicts; Consents. Assuming that (a) the Sale Order and all other requisite Bankruptcy Court approvals and CCAA Orders are obtained, and (b) the notices, authorizations, approvals, Orders, Permits or consents set forth on Schedule 3.3 are made, given, obtained or waived (as applicable), neither the execution and delivery by Seller of this Agreement or the other

Transaction Agreements, nor the consummation by Seller of the Transactions, nor performance or compliance by Seller with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Organizational Documents of Seller (ii) except as set forth on Schedule 3.3, violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any Assigned Contract or accelerate Seller's obligations under any such Assigned Contract, (iii) violate any Law or Order applicable to Seller or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets, except, in the case of clauses (ii), (iii) or (iv), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Legal Actions. As of the date of this Agreement, except as set forth on Schedule 3.4, there are no, and during the two (2) years preceding the date hereof there have been no, Actions pending or to the Knowledge of Seller, threatened in writing that relate to the Transferred Business (a) to which Seller is or was a party or to which any property, rights or interests of any of them is or was subject, except for (i) such Action that, if adversely determined, would not reasonably be expected to result in (x) Liabilities or obligations of any nature of Seller following the Closing in excess of $500,000 or (y) equitable remedies that would reasonably be expected to be material and adverse to the Transferred Business, taken as a whole, following the Closing, and (ii) following the Petition Date, claims of creditors or other parties in the Bankruptcy Cases or (b) that challenge, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Transactions.

3.5 Compliance with Laws; Permits.

(a) Except as set forth on Schedule 3.5(a), with respect to the Transferred Business, Seller is, and during the two (2) years preceding the date hereof has been, in compliance in all material respects with the requirements of all Laws applicable to it or to its properties, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and no written notices have during the two (2) years preceding the date hereof been received by Seller alleging such material violation of any such Laws.

(b) To the Knowledge of Seller, except as set forth on Schedule 3.5(b), Seller possesses all Permits that are necessary or required to conduct the Transferred Business with respect to the Acquired Assets as currently conducted, except for such Permits, the failure to have so obtained, made or delivered would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Within the two (2) years preceding the date hereof, Seller has not received written notice of any revocation or modification of any Permit and all such Permits are in full force and effect and will continue to be in full force and effect following the consummation of the Transactions, except where the failure to so continue would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.6 Leased Real Property. Schedule 3.6 contains a true and complete list of all Acquired Leases. Seller has delivered to the Purchaser or the Purchaser's Advisors true and complete copies of the Acquired Leases. Except as set forth on Schedule 3.6 (and subject to entry of the Sale Order), with respect to each of the Acquired Leases: (i) such Acquired Lease is legal, valid, binding, enforceable and in full force and effect; (ii) to the Knowledge of Seller, there are no existing

material disputes with respect to such Acquired Lease; (iii) none of Seller, or, to the Knowledge of Seller, any other party to the Acquired Lease is in breach or default under such Acquired Lease, and, to the Knowledge of Seller, no event has occurred within the two (2) years preceding the date hereof or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Acquired Lease, except, in each case, for such breaches or defaults as would not reasonably be expected to be material to the Transferred Business, taken as a whole; (iv) Seller does not currently sublease, license or otherwise grant any Person the right to use or occupy such Acquired Leased Real Property or any portion thereof, other than datacenter collocation and related services; and (v) none of the Acquired Leases, or any interest therein, is collaterally assigned or subject to a security interest. The Acquired Leases comprise all of the real property used or intended to be used in, or otherwise related primarily to, the Transferred Business. Other than licenses granted under the Transferred Customer Contracts, Seller is the sole party in possession of the Acquired Leased Real Property.

3.7 Assigned Contracts.

(a) Subject to requisite Bankruptcy Court approvals and CCAA Orders being granted, and assumption by Seller of the applicable Contract in accordance with applicable Law and except (i) as a result of the commencement of the Bankruptcy Cases and (ii) with respect to any Contract that has previously expired in accordance with its terms, been terminated, restated, or replaced, (A) each Assigned Contract is valid and binding on Seller and, to the Knowledge of Seller, each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions, (B) Seller, and, to the Knowledge of Seller, any other party thereto, have performed in all material respects all obligations required to be performed by it under each Assigned Contract, (C) Seller has received no written notice of the existence of any breach or default on the part of Seller under any Assigned Contract, (D) there are no events or conditions which constitute, or, after notice or lapse of time or both, will constitute a material default on the part of Seller, or to the Knowledge of Seller, any counterparty under such Assigned Contract and (E) Seller has not received any written notice from any Person that such Person intends to terminate, or not renew, any Assigned Contract.

3.8 Tax Matters. Except as set forth on Schedule 3.8:

(a) (i) all material Tax Returns required to be filed by or on behalf of Seller with regard to the Acquired Assets have been timely filed with the appropriate Taxing Authorities (after giving effect to any valid extensions of time in which to make such filings) and all material Taxes shown as due on such Tax Returns have been timely paid, except for Taxes being contested in good faith by appropriate proceedings.

(b) Seller has, within the last three (3) years, duly and timely withheld from Business Employees salaries, wages, and other compensation and have paid over to the appropriate Taxing Authorities all material amounts required to be so withheld and paid over for all periods under all applicable Laws.

(c) All material deficiencies asserted or assessments made as a result of any examinations by any Taxing Authority of the Tax Returns of Seller with regard to the Acquired

Assets have been paid, settled or withdrawn, and there are no other audits or investigations by any Taxing Authority in progress, nor has Seller received written notice from any Taxing Authority that it intends to conduct such an audit or investigation.

(d) Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

(e) Seller is registered for the collection of the GST/HST and its registration number under the ETA is 869416073 RT000, is registered for the collection of the QST and its registration number under the QSTA is 1207636149 TQ0001, and is registered for the collection of PST and its registration number under the PSTA is 1014-4649.

(f) The representations and warranties contained in this Section 3.8 are the only representations and warranties being made with respect to Tax matters of Seller, and nothing in this Section 3.8 or otherwise in this Agreement shall be construed as a representation or warranty with respect to the amount, availability or usability of any net operating loss, capital loss, Tax basis or other Tax asset or attribute of Seller or in any taxable period.

3.9 Environmental Matters. Except as set forth on Schedule 3.9, with regard to the Acquired Assets (i) Seller is in compliance in all material respects with all applicable Environmental Laws, which compliance includes possessing and complying in all material respects with all Permits required by applicable Environmental Laws, (ii) within the two (2) years preceding the date hereof Seller has not received any written notice, and there are no Actions pending or, to the Knowledge of Seller, threatened in writing against Seller or any Subsidiary, regarding any material violation of Environmental Laws and (iii) to the Knowledge of Seller, within the past two (2) years preceding the date hereof Seller has not released any Hazardous Material at the Acquired Leased Real Property in violation of Environmental Laws and in a manner that currently requires remediation under Environmental Laws. This Section 3.9 contains Seller's sole representations and warranties regarding Environmental Laws, Hazardous Materials, or any other environmental, health or safety matters.

3.10 Due Diligence Materials. Schedule 3.10(a) and 3.10(c) are true, accurate, and complete in all material respects regarding the matters addressed below as listed thereon.

(a) Schedule 3.10(a) sets forth, as of the date hereof, for each of the Transferred Business (i) the name of such customer, (ii) the currency for such customer's payments, (iii) the monthly recurring revenue for such customer, (iv) the sold capacity, measured in kilowatts, for such customer, (v) price per kilowatt for such customer, (vi) the start date of such customer's current Contract with Seller, (vii) the current end of the term of such customer's current Contract with Seller, (viii) the length of the term of such customer's current Contract, and (ix) the annual price escalator percentage for such customer under its current Contract.

(b) To the Knowledge of Seller, no customer set forth on Schedule 3.10(a) has materially reduced, cancelled or terminated (except for expiration of Contracts pursuant to their terms) its business relationship with Seller or has notified Seller in writing of any intent to do so.

(c) Schedule 3.10(c) sets forth, as of the date hereof, each Business Employee and indicating each such Business Employee's (i) name or identification number; (ii) seniority

date; (iii) active or inactive status; (iv) job title; (v) full time, part time or temporary status; (vi) work location; (vii) base annual salary, (viii) bonus entitlement, (ix) vacation entitlement (other than statutory entitlement), (x) any other employee benefit entitlement (other than statutory entitlements), and (xi) terms of all related employement agreements, or a statement that there are no employment agreements for such Business Employee.

3.11 Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of Seller.

3.12 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Representations") (it being understood that Purchaser has relied only on such Express Representations and warranties), Purchaser acknowledges and agrees that neither Seller nor any other Person on behalf of Seller makes, and neither Purchaser has relied on, is relying on, or will rely on the accuracy or completeness of any express or implied representation or warranty with respect to any Seller, the Transferred Business, the other Acquired Assets, or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person or elsewhere to Purchaser or any of its Affiliates or Advisors on behalf of Seller or any of its Affiliates or Advisors. Without limiting the foregoing, neither Seller nor any of its Advisors or any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in expectation of the Transactions or any discussions with respect to any of the foregoing information.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as of the date hereof as follows.

4.1 Organization and Qualification. Purchaser is an entity duly created, formed or organized (as applicable), validly existing and in good standing under the Laws of the jurisdiction of its creation, formation or organization (as applicable) and has all requisite corporate or limited liability company power and authority necessary to conduct its business as it is now being conducted, except (other than with respect to Purchaser's due formation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have an adverse effect on Purchaser's ability to consummate the Transactions. Purchaser is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) under the Laws of each jurisdiction in which the nature of the business conducted by it or the character or location of the properties owned or used by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or

in the aggregate, reasonably be expected to have an adverse effect on Purchaser's ability to consummate the Transactions.

4.2 Authorization of Agreement. Purchaser has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by Purchaser of the Transactions, subject to requisite Bankruptcy Court approvals and CCAA Orders being granted, have been duly authorized by all requisite corporate or similar organizational action and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals and CCAA Orders being granted, this Agreement has been duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery hereof by the other Parties, constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

(a) Assuming that (i) the Sale Order, and all other requisite Bankruptcy Court approvals and CCAA Orders are obtained and (ii) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 4.3(a) are made, given, obtained or waived (as applicable), neither the execution and delivery by Purchaser of this Agreement, nor the consummation by Purchaser of the Transactions, nor performance or compliance by Purchaser with any of the terms or provisions hereof, will (A) conflict with or violate any provision of Purchaser's Organizational Documents, (B) violate any Law or Order applicable to Purchaser, (C) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any loan or credit agreement or other material Contract to which Purchaser is a party or accelerate Purchaser's obligations under any such Contract, or (D) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Purchaser or any of its Subsidiaries, except, in the case of clauses (B) through (D), as would not, individually or in the aggregate, reasonably be expected to prevent or materially impair, alter or delay the ability of Purchaser to consummate the Transactions.

(b) Except as set forth on Schedule 4.3(a), Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the Transactions, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially impair, alter or delay the ability of Purchaser to consummate the Transactions.

4.4 Financing. Purchaser has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Cash Payment in full and to consummate all of the other Transactions, including the payment of the Purchase Price in full and all fees, expenses of, and other amounts required to be paid by, Purchaser in connection with the Transactions and, to

Purchaser's knowledge, there is no circumstance or condition that could reasonably be expected to prevent or substantially delay the availability of such funds or otherwise impair such capability at the Closing and such other dates that such obligations and transactions are required to be satisfied pursuant to the terms hereof. Purchaser affirms that it is not a condition to Closing or to any of its obligations under this Agreement that Purchaser obtains financing for the Transactions.

4.5 Brokers. There is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that might be entitled to any fee or commission in connection with the Transactions.

4.6 No Litigation. There are no Actions pending or, to Purchaser's knowledge, threatened against or affecting Purchaser that will or would be reasonably likely to adversely affect Purchaser's performance of its obligations under this Agreement or the consummation of the Transactions.

4.7 Certain Arrangements. As of the date hereof, there are no Contracts, undertakings, commitments or obligations, whether written or oral, between any member of the Purchaser Group, on the one hand, and any member of the management of Seller or its board of directors (or applicable governing body of any Affiliate of Seller), any holder of equity or debt securities of Seller, or any lender or creditor of Seller or any Affiliate of Seller, on the other hand, (a) relating in any way to the acquisition of the Acquired Assets or the Transactions or (b) that would be reasonably likely to prevent, restrict, impede or affect adversely the ability of Seller or any of its Affiliates to entertain, negotiate or participate in any such transactions.

4.8 Solvency. Purchaser is, and immediately after giving effect to the Transactions, Purchaser shall be, solvent and at all times shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debt (including a reasonable estimate of the amount of all contingent Liabilities) and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay or defraud either present or future creditors of Purchaser. In connection with the Transactions, Purchaser has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

4.9 Investigation. Purchaser acknowledges, covenants and agrees that it is relying on its own independent investigation and analysis in entering into this Agreement and consummating the Transactions. Purchaser is knowledgeable about the industries in which Seller operates and is capable of evaluating the merits and risks of the Transactions and is able to bear the substantial economic risk of such investment for an indefinite period of time. Purchaser has been afforded full access to the books and records, facilities and personnel of Seller for purposes of conducting a due diligence investigation and has conducted a full due diligence investigation of Seller. Purchaser does not have any knowledge that the representations and warranties of Seller in this Agreement are not true and correct in all respects, and Purchaser does not have any knowledge of any errors in, or material omissions from, the Schedules.

4.10 Transfer Tax Registrations. Purchaser is registered for the collection of the GST/HST and its registration number under the ETA is 859292344, and is registered for the collection of the QST and its registration number under the QSTA is 1219448291TQ0001.

## ARTICLE V
## BANKRUPTCY COURT MATTERS

5.1 Bankruptcy Actions.

(a) Within three (3) Business Days following the date hereof, Seller shall file, or caused to be filed, with the Bankruptcy Court a motion seeking approval of the Sale Order. Seller shall use commercially reasonable efforts to schedule a hearing with the Bankruptcy Court to consider entry of the Sale Order.

(b) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, Seller shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order.

(c) Purchaser shall promptly take all actions as are reasonably requested by Seller to assist in obtaining the Bankruptcy Court's entry of the Sale Order and any other Order reasonably necessary in connection with the Transactions.

(d) The Foreign Representative and Seller shall file with the CCAA Court an application in the CCAA Proceeding seeking the granting of the CCAA Orders within a reasonable period of time following approval of the Sale Order by the Bankruptcy Court.

(e) Each Party shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the Transactions and (ii) keep the other reasonably apprised of the status of material matters related to the Agreement, including, upon reasonable request, promptly furnishing the other with copies of notices or other communications received by a Seller from the Bankruptcy Court with respect to the Transactions.

(f) Purchaser shall provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code for the Assigned Contracts. Purchaser agrees that it will take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been a sufficient demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser's Advisors available to testify before the Bankruptcy Court.

5.2 Cure Costs. Subject to entry of the Sale Order, Seller shall, on or prior to the Closing, pay all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts so that such Contracts may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement ("Cure Costs").

5.3 Approval. The Parties' obligations under this Agreement and in connection with the Transactions are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Sale Order) and CCAA Court (including granting of the CCAA Orders). Nothing in this Agreement shall require either Party or their respective Affiliates

to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

## ARTICLE VI
## COVENANTS AND AGREEMENTS

6.1 Employee Matters.

(a) At least 5 Business Days prior to Closing, Purchaser shall extend to each Business Employee employed by Seller a written offer of employment, which offer shall (i) be reviewed by Seller, with a reasonable opportunity to provide Seller's comments, if any, and (ii) if accepted, become effective immediately after the Closing ("Transfer Offer"). Business Employees who accept such Transfer Offers and begin employment with Purchaser shall be collectively referred to herein as "Transferred Employees." Purchaser shall promptly notify Seller of whether each Business Employee has accepted their Transfer Offer, and following such notice, Seller will deliver evidence reasonably satisfactory to Purchaser that each Business Employee's employment with Seller will be terminated effective as of Closing, it being the intent of the Parties that effective as of the Closing, (i) employment by Purchaser of Transferred Employees shall commence and (ii) each Business Employee previously employed by Seller shall cease to be an employee of Seller. Nothing in this Agreement shall be construed as a representation or guarantee by Seller or any of its Affiliates that any or all Business Employees employed by Seller will accept the Transfer Offer, or that any Transferred Employee will continue in employment with Purchaser following the Closing for any period of time.

(b) For the avoidance of doubt, and notwithstanding anything to the contrary set forth in Section 1.3 above, all Liabilities relating to the employment by Seller of any Business Employees shall be Excluded Liabilities; provided, however, that Purchaser shall be solely liable for all Liabilities relating to the Transferred Employees to the extent such Liability (i) first arises after such Transferred Employee commences employment with Purchaser and relates to or arises from such employment with Purchaser, or (ii) relates to or arises from a breach of or default under a Transfer Offer. Purchaser further agrees and acknowledges that some of the Business Employees reside in or are otherwise protected by the Laws of the Province of Quebec, and that such Laws may relate to Purchaser's decision or potential obligation to extend a Transfer Offer to one or more Business Employees, the terms contained in any such Transfer Offer, or Purchaser's other decisions with respect to the Transferred Employees or Business Employees that reside in or are otherwise protected by the Laws of the Province of Quebec (the "Quebec Employment Matters"). Purchaser will decide issues relating to the Quebec Employment Matters in its sole discretion; provided that Purchaser shall be solely responsible for any and all Liabilities arising from or relating to any Quebec Employment Matters. Purchaser agrees to indemnify and save harmless Seller from all such Liabilities a Governmental Body or Business Employee asserts or imposes as a result of the Quebec Employment Matters.

(c) For the avoidance of doubt, and notwithstanding anything to the contrary set forth in Section 1.3 above, effective as of the Closing, Purchaser and Purchaser's Affiliates shall assume all obligations, Liabilities and commitments in respect of claims made by any Transferred Employee and Québec Employee (or any other individual claiming that he or she is or should be a Transferred Employee or a Québec Employee) for severance or other termination

benefits (including claims for wrongful dismissal, dismissal without a good and sufficient cause, reasonable notice of termination of employment, pay in lieu of reasonable notice or breach of Contract) arising out of, relating to or in connection with any failure to offer employment to, or to continue the employment of, any such Transferred Employee and Québec Employee (or other individual claiming that he or she is or should be a Transferred Employee or a Québec Employee) or other failure to comply with the terms of this Agreement.

(d) The provisions of this Section 6.1 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person (including for the avoidance of doubt any employees of Seller or any Transferred Employees), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 6.1 or under or by reason of any provision of this Agreement). Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement; (ii) shall, subject to compliance with the other provisions of this Section 6.1, alter or limit Purchaser's or Seller's ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement; or (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment.

6.2 Overhead and Shared Services. (i) Purchaser acknowledges and agrees that, effective as of the Closing Date: (i) all Overhead and Shared Services provided to the Transferred Business shall cease, (ii) Seller and its Affiliates shall have no further obligation to provide any such Overhead and Shared Services to the Transferred Business and (iii) all rights of the Transferred Business under Shared Contracts shall be terminated and the Transferred Business shall have no further rights thereunder, other than Shared Customer Contracts, which are the subject of Section 6.4.

6.3 De-Branding. As soon as reasonably practicable, but in no event more than thirty (30) days following the Closing, Purchaser shall take all actions necessary to remove any of Seller's or any of its Affiliates' trademarks, tradenames, trade dress, branding, signage, or other usage of Seller's or any of its Affiliates' trademarks, business names and logos, including all uses of the name "Cyxtera," located on or about the Acquired Leased Real Property or on, as may be applicable, any billing or other information technology systems and applications, stationery, purchase orders, invoices, receipts, and other similar documents and materials, advertising and marketing materials, policies, procedures and manuals, employee information or data, employee identifications, and similar documents and materials.

6.4 Shared Customer Contracts.

(a) With respect to Shared Customer Contracts, Seller and its Affiliates shall use commercially reasonable efforts (and Purchaser shall reasonably cooperate with Seller and its Affiliates in connection with such efforts) to:

(i) cause each Shared Customer Contract to be assigned in relevant part to Purchaser or to appropriately amend such Shared Customer Contract so that Purchaser will, from and after the Closing, be entitled to the rights and benefits inuring to the

Transferred Business under such Shared Customer Contracts on substantially the same terms as then in effect; and

(ii) obtain prior to the Closing or, if not obtained, shall use commercially reasonable efforts to obtain, prior to the earliest of (A) six months following the Closing Date, (B) the closing of the Bankruptcy Cases or the windup or dissolution of Seller, and (C) the expiration of such Shared Customer Contract in accordance with its current terms (such period, the "Shared Contract Period"), from the counterparty to each Shared Customer Contract any Consent or similar action that is required to separate the portion of such Shared Customer Contract that relates to the Transferred Business, it being understood that (X) Seller and Purchaser shall not be required to grant any consideration to any counterparty to such Shared Customer Contract, (Y) the allocations of benefits and burdens of any Shared Customer Contract shall be apportioned such that the Transferred Business receives and bears such benefits and burdens consistent in all material respects with the past practice of Seller, its Affiliates, and such counterparty, and (Z) any amendment to any Shared Customer Contract that would adversely affect in any material respect the Transferred Business shall be subject to Purchaser's written approval (not to be unreasonably withheld, conditioned or delayed).

(b) During the Shared Contract Period, Purchaser and Seller shall cooperate and work in good faith to separate the applicable portion of any Shared Customer Contract hereunder. The Contract constituting the separated portion of any Shared Customer Contract that relates to the Transferred Business shall constitute a Transferred Customer Contract, and in no event shall those portions of any Shared Customer Contract not relating to the Transferred Business be considered a Transferred Customer Contract. With respect to any Shared Customer Contract, if partial assignment or amendment cannot be obtained, or if an attempted partial assignment or amendment thereof would adversely affect in any material respect the rights of the Purchaser, Seller or their respective Affiliates, Seller and Purchaser will, and will cause the respective Affiliate to, use their commercially reasonable efforts to negotiate a mutually acceptable arrangement under which Purchaser (or its Affiliates) or Seller (or its Affiliates) will, from and after the Closing, to the extent permitted by applicable Law, obtain the benefits and assume the Liabilities and obligations under such Shared Customer Contract (consistent with this Section 6.4) to the extent related to the Transferred Business (in the case of the Purchaser) or the other businesses of Seller and its Affiliates (in the case of Seller), including entering into sub-contracting, sub-licensing or sub-leasing arrangements for the benefit of Purchaser or Seller, as the case may be.

(c) Without limiting the generality of the foregoing and notwithstanding anything to the contrary herein, Seller and Purchaser each hereby further covenant and agree to and cause its respective Affiliates to abide by and comply with all of the terms and conditions of each applicable Shared Customer Contracts at all times during the Shared Contract Period, and in connection therewith each Party shall promptly indemnify and hold harmless the other Party and its respective Affiliates for any failure to comply with its compliance obligations hereunder. Notwithstanding anything to the contrary herein, including in Section 10.4 or in Section 10.6 hereof, all rights, obligations, remedies and defenses of Seller under this Section 6.4 with respect to any Shared Customer Contract shall be automatically assigned to an acquiror of the Seller's interest in such Shared Customer Contract, and such acquiror shall automatically be an express

third party beneficiary of this Section 6.4. This Section 6.4 may not be amended or modified, and no waiver may be granted hereunder, without the prior written consent of any such acquiror of a Shared Customer Contract.

6.5 Reasonable Efforts; Cooperation.

(a) Subject to the other terms of this Agreement, each Party shall, and shall cause its Subsidiaries to, use its and their commercially reasonable efforts to perform its and their respective obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable to cause the Transactions to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party, its Affiliates and its and their respective Advisors in connection with any step required to be taken as a part of its obligations hereunder.

(b) The obligations of Seller pursuant to this Agreement, including this Section 6.5, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Cases), Seller's debtor-in-possession financing, and Seller's obligations as debtors in possession to comply with any Order of the Bankruptcy Court (including the Sale Order), and Seller's duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

6.6 Further Assurances. From time to time, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the Transactions.

6.7 Insurance Matters. Purchaser acknowledges that, upon Closing, all insurance coverage provided in relation to any Seller and the Acquired Assets that is maintained by such Seller or its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage to the Transferred Business, the Acquired Assets and the Assumed Liabilities and no further coverage shall be available to the Transferred Business, the Acquired Assets or the Assumed Liabilities under any such policies.

6.8 Receipt of Misdirected Assets; Liabilities.

(a) From and after the Closing, if Seller or any of its Affiliates receives any right, property or asset that is an Acquired Asset, Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to Seller, and such asset will be deemed the property of Seller held in trust by Purchaser for Seller until so transferred.

(b) From and after the Closing, if Seller or any of its Affiliates is subject to a Liability that should belong to Purchaser or its Affiliates pursuant to the terms of this Agreement, Seller shall promptly transfer or cause such of its Affiliates to transfer such Liability to Purchaser, and Purchaser shall assume and accept such Liability. From and after the Closing, if Purchaser or any of its Affiliates is subject to a Liability that should belong to Seller or its Affiliates pursuant to the terms of this Agreement, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such Liability to the applicable Seller or Affiliate, and such Seller or Affiliate shall assume and accept such Liability.

6.9 Estoppel Certificates. From and after the date hereof, Seller shall use good faith, commercially reasonable efforts to obtain: (a) from each landlord of the Acquired Leased Real Property an estoppel certificate in the form attached hereto as Exhibit C (each a "Landlord Consent"); and (b) from each customer under the Transferred Customer Contracts, an Estoppel Certificate.

6.10 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification of the Transferred Business (including its financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects), the Acquired Assets, and the Assumed Liabilities, and, in making its determination to proceed with the Transactions, Purchaser and the Purchaser Group have relied solely, are relying, and will rely, solely, on the Express Representations and the results of the Purchaser Group's own independent investigation and verification and have not relied on, are not relying on, and will not rely on, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors, in each case, whether written or oral, made or provided by or on behalf Seller or any other Seller Party, or any failure of any of the foregoing to disclose or contain any information, except for the Express Representations. Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group may rely in connection with the Transactions and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, statutory, whether in written, electronic or oral form, including (A) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in meetings, calls or correspondence with management of Seller, any of the Seller Parties or any other Person on behalf of Seller or any of the Seller Parties or any of their respective Affiliates or Advisors and (B) any other statement relating to the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects of Seller, or the quality, quantity or condition of any of the Acquired Assets, are, in each case, specifically disclaimed by Seller, on its behalf and on behalf of the Seller Parties. Purchaser, on its own behalf and on behalf of the Purchaser Group: (1) disclaims reliance on the items in clause (ii) in the

immediately preceding sentence; and (2) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence.

(b) Purchaser acknowledges and agrees, on its own behalf and on behalf of the members of Purchaser Group, that it will not assert, institute, or maintain, and will cause each member of the Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.10. Purchaser acknowledges and agrees, on its own behalf and on behalf of the members of Purchaser Group, that the covenants and agreements contained in this Section 6.10 (i) require performance after the Closing to the maximum extent permitted by applicable Law and (ii) are an integral part of the Transactions and that, without these agreements set forth in this Section 6.10, Seller would not enter into this Agreement.

## ARTICLE VII
## CONDITIONS TO CLOSING

7.1 Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each Party to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) no Governmental Body of competent jurisdiction shall have issued, enacted, entered, promulgated or enforced any Order (including any temporary restraining Order or preliminary or permanent injunction) or Law restraining, enjoining or otherwise prohibiting the Closing that is continuing in effect; and

(b) the Bankruptcy Court shall have entered the Sale Order and shall not have been stayed, reversed, or modified;

(c) the CCAA Court shall have pronounced the CCAA Orders and the CCAA Orders shall not have been stayed, set-aside, reversed or modified.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) (i) the representations and warranties made by Seller in Article III (in each case, other than the Fundamental Representations) shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except (i) that representations and warranties that are made as of a specified date need be true and correct in all material respects only as of such date, and (ii) the representations and warranties set forth in Section 3.1, Section 3.2 and Section 3.11 (collectively, the "Fundamental Representations") shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except that such Fundamental Representations that are made as of a specified date need be true and correct only as of such date;

(b) Seller shall not have breached, in any material respect, the covenants required to be performed or complied with by Seller under this Agreement on or prior to Closing;

(c) No Material Adverse Effect shall have occurred and be continuing with respect to the Transferred Business;

(d) Seller shall have executed or delivered to Purchaser all of the documents, instruments, and agreements set forth in Section 2.3;

(e) The Sale Order, as approved by the Bankruptcy Court, shall be substantially in the forms attached to this Agreement as Exhibit B.

(f) Purchaser shall have received on and as of the Closing Date a certificate of an authorized officer of Seller confirming that the conditions set forth Section 2.3 have been satisfied.

7.3 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that representations and warranties that are made as of a specified date need be true and correct in all material respects only as of such date;

(b) Purchaser shall not have breached in any material respect the covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date; and

(c) Seller shall have received on and as of the Closing Date a certificate of an authorized officer of Purchaser confirming that the conditions set forth in Section 2.4 have been satisfied.

7.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing. None of Purchaser or Seller may rely on the failure of any condition set forth in this Article VII, as applicable, to be satisfied if such failure was caused by such Party's failure to perform any of its obligations under this Agreement, including its obligation to use its reasonable best efforts to consummate the Transactions as required under this Agreement.

## ARTICLE VIII
## TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing only in accordance with this Section 8.1, and in no other matter:

(a) by written notice of either Purchaser or Seller to the other, if there is in effect any Law or Order enacted or issued by a Government Body of competent jurisdiction that restrains, enjoins, declares unlawful or otherwise prohibits the consummation of the Closing or declaring unlawful the Transactions, and such Law or Order has become final, binding and non-appealable; provided that no Party may terminate this Agreement under this Section 8.1(a) if the issuance of such Order was caused by such Party's failure to perform any of its obligations under this Agreement;

(b) by written notice of either Purchaser or Seller, if the Closing shall not have occurred on or before December 31, 2023 (the "Outside Date") (or such later date as provided in Section 10.12); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(b) if the failure of the Closing to have occurred by the Outside Date was caused by such Party's failure to perform any of its obligations under this Agreement; provided further that Seller may extend the Outside Date up to an additional 45 days to the extent necessary to satisfy the conditions set forth in Section 7.1 so long as the other conditions in Article VII have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but which conditions are capable of being satisfied);

(c) by written notice from Seller to Purchaser, if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but which conditions are capable of being satisfied) or waived and Purchaser fails to complete the Closing at the time required by Section 2.2;

(d) by written notice from Seller to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied; provided that (i) if such breach is curable by Purchaser (other than a breach or failure by Purchaser to close when required pursuant to Section 2.2) then Seller may not terminate this agreement under this Section 8.1(d) unless such breach has not been cured by the date, which that the earlier of (A) one (1) Business Day prior to the Outside Date and (B) ten (10) days after Seller notifies Purchaser of such breach and (ii) Seller's right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to Seller at any time that Seller is in breach of any covenant, representation or warranty hereunder such that the conditions in Section 7.3 cannot be satisfied.

(e) by written notice from Purchaser to Seller, upon a breach of any covenant or agreement on the part of Seller, or if any representation or warranty of Seller have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied; provided that (i) if such breach is curable by Seller (other than a breach or failure by Seller to close when required pursuant to Section 2.2) then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is

the earlier of (A) one (1) Business Day prior to the Outside Date and (B) ten (10) days after the Purchaser notifies Seller of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to Purchaser at any time that Purchaser is in breach of any covenant, representation or warranty hereunder such that the conditions in Section 7.2 cannot be satisfied;

(f) by written notice from Purchaser to Seller if any Material Adverse Effect occurs to the Transferred Business after the date hereof.

8.2 Effect of Termination. In the event of termination of this Agreement in accordance with Article VIII, this Agreement shall forthwith become null and void and no Party or any of its partners, officers, directors, managers or equity holders will have any Liability under this Agreement; provided that this Section 8.2 and Article X shall survive any such termination; provided further that no termination will relieve Purchaser from any liability for damages, losses, costs or expenses (which the Parties acknowledge and agree shall not be limited to reimbursement of expenses or out-of-pocket costs, but shall exclude consequential, special, punitive, and any other damages beyond actual damages incurred by Seller and related directly to such Willful Breach, any speculative damages or any damages based on any multiple or other valuation method) resulting from any Willful Breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser to consummate the Closing if and when it is obligated to do so hereunder). Nothing in this Section 8.2 will be deemed to impair the right of any Party to be entitled to specific performance or other equitable remedies to enforce specifically the terms and provisions of this Agreement.

## ARTICLE IX
## TAXES

9.1 Transfer Taxes. Any U.S. federal, state, local, or non-U.S., GST/HST, QST, PST or other consumption sales, use, excise, value added, registration, real property, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges (including all related interest, penalties, and additions to any of the foregoing) payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the Transactions (the "Transfer Taxes") shall be borne and timely paid by Purchaser, and Purchaser shall timely file all Tax Returns related to any Transfer Taxes with the appropriate Taxing Authority.

9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local and non-U.S. income Tax purposes, Purchaser, Seller, and their respective Affiliates shall allocate the Purchase Price (and any Assumed Liabilities or other amounts treated as part of the purchase price for U.S. federal and non-U.S. income Tax purposes) among the Acquired Assets, which shall be consistent with the requirements of Section 1060 of the Code and the regulations promulgated thereunder and any similar provision of applicable Tax Law (the "Allocation Methodology"). As soon as commercially practicable, but no later than 45 days following the determination of the final Purchase Price, Purchaser shall provide a proposed allocation to Seller setting forth the allocation of the Purchase Price (and other amounts treated as part of the purchase price for U.S. federal and Canadian income Tax purposes) among the Acquired Assets in accordance with the Allocation Methodology (the "Allocation") subject to Seller's review and approval (such approval

not to be unreasonably delayed, conditioned or withheld). Purchaser shall incorporate any changes reasonably requested by Seller with respect to such Allocation. If Seller delivers a written objection within 30 days after receipt of the draft Allocation proposed by Purchaser, then Purchaser and Seller shall negotiate in good faith to resolve any such objection, and, if Seller and Purchaser cannot resolve such dispute within 30 days of Purchaser's receipt of Seller's objection, then each of Purchaser, on the one hand, and Seller, on the other hand, shall be entitled to take its own position regarding the appropriate Allocation. The Parties and their respective Affiliates shall file all Tax Returns in accordance with such Allocation (as finally determined under this Section 9.2) and not take any Tax related action inconsistent with the Allocation, in each case, unless otherwise required by a "determination" within the meaning of section 1313(a) of the Tax Code and other applicable Law.

9.3 Cooperation. Purchaser and Seller shall reasonably cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Action, audit, litigation, or other proceeding with respect to Taxes.

9.4 Preparation of Tax Returns and Payment of Taxes.

(a) Except as otherwise provided by Section 9.1, Seller shall prepare and timely file (i) all Tax Returns with respect to the Acquired Assets for any Tax period ending on or before the Closing Date and (ii) all income Tax Returns of Seller.

(b) Purchaser shall prepare and timely file all Tax Returns with respect to the Acquired Assets for any Tax period ending after the Closing Date. With respect to any Straddle Period, Purchaser shall prepare such Tax Returns consistent with past practice, and shall provide Seller or its successors in rights, as applicable, with a draft of such Tax Returns at least 30 days prior to the filing of any such Tax Return. Purchaser shall incorporate any changes reasonably requested by Seller with respect to such Tax Returns.

(c) Purchaser shall not file any Tax Return, file an amendment to any previously-filed Tax Return, or otherwise take any Tax position that has the effect of increasing any Tax that is payable or otherwise borne by Seller, without the written consent of Seller (such consent not to be unreasonably delayed, conditioned or withheld); except to the extent Purchaser reasonably believes such position is required by Law.

(d) Property, ad valorem, intangible, and other periodic Taxes imposed or assessed directly against, the Acquired Assets (including to landlords through CAM charges under the Acquired Leases, but, for the avoidance of doubt, excluding any Transfer Taxes and any gross, net or similar Taxes) for any Straddle Period will be apportioned and prorated between Seller, on one hand, and Purchaser, on the other hand, as of the Closing Date. Purchaser shall bear the Pro Rata Portion of such Taxes, and Seller shall bear the remaining portion of such Taxes. The Parties hereby agree and acknowledge the apportionment of Taxes contemplated by this Section 9.4(d) results in an aggregate amount equal to $6,073.16 payable at Closing by Purchaser to Seller, that the Cash Payment will be adjusted accordingly, and that such apportionment shall not be revisited after Closing, even if the actual apportionment (which would have been determined when the actual amount of such Taxes become known) is greater or less than the apportionment made at Closing. Purchaser shall be responsible for preparing and filing all Tax Returns with respect to,

and shall be responsible for paying to the applicable Taxing Authority or landlord, as applicable, all of, the Taxes contemplated by this Section 9.4(d).

(e) If available, the Parties will complete and sign on or before the Closing Date, a joint election under section 167(1) of the ETA and section 75 of the QSTA, to permit the purchase and sale of any applicable Acquired Assets, without incurring GST/HST or QST. If available, the Purchaser will duly file the elections with the appropriate Governmental Body within the time permitted under the ETA and QSTA. The Purchaser agrees to indemnify and save harmless Seller from all Tax, penalties and interest in the event a Governmental Body asserts the election or elections contemplated by this section are not available. In the event the joint elections are not available, the Purchaser agrees to self-assess for any GST/HST and QST on the real property, and fixtures to real property included in the Acquired Assets and to pay any GST/HST, QST and PST to Seller at Closing. All PST owing on the Acquired Assets shall be payable by the Purchaser to Seller at Closing.

## ARTICLE X
## MISCELLANEOUS

10.1 Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Except as set forth below, and except for any claim based on fraud (which claims, if any, shall, for the avoidance of doubt, be subject to Section 6.10), each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing, such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for one year following the Closing Date, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and Seller acknowledge and agree, on their own behalf, with respect to Purchaser, and on behalf of the Purchaser Group that the agreements contained in (among others) Section 6.10 and this Section 10.1 require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for one year. Notwithstanding anything to the contrary above in this Section 10.1 but subject in all cases to Section 6.10, the representations and warranties set forth in Sections 3.8(d), 3.9, and 3.10, (and no other representations and warranties) and any claim based on fraud (which claims, if any, shall, for the avoidance of doubt, be subject to Section 6.10), shall survive Closing in each case for a period of one year; provided that Seller shall have no Liability for any breach of such representations or warranties if Purchaser's aggregate Liability incurred as a result of all such breaches is less than $10,000.00 and in no event shall Seller's Liability hereunder include (i) any consequential, special, punitive, or any other damages beyond actual damages incurred by Purchaser and related directly to such breach, (ii) any speculative damages or (iii) any damages based on any multiple or other valuation method.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein, all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the Transactions will be paid by the Party incurring such fees, costs and expenses.

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail (having obtained electronic delivery confirmation thereof) if delivered by 5:00 P.M. local time of the recipient on a Business Day and otherwise on the following Business Day, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

Cologix Canada, Inc.
c/o Cologix, Inc.
1601 19th Street, Suite 650
Denver, Colorado 80202
Attention: General Counsel
Email: legal@cologix.com

Notices to Seller:

Cyxtera Technologies, Inc.
2333 Ponce De Leon Blvd, Suite 900
Coral Gables, Florida 33134
Attention: Victor Semah, Chief Legal Officer
E-mail: victor.semah@cyxtera.com
legal@cyxtera.com

with copies to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Christopher Marcus, P.C.
Derek Hunter
Steve Toth
Email: christopher.marcus@kirkland.com
derek.hunter@kirkland.com
steve.toth@kirkland.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to the entry and terms of the Sale Order, Seller, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Cases or any successor Chapter 7 cases; provided that such assignee assumes all of the assignors obligations hereunder and neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and Seller, and any attempted assignment or delegation without such prior written consent shall be null and void; provided further that either Party may assign this Agreement in connection with the transfer of all or substantially all of its assets or the Acquired Assets. Notwithstanding the foregoing, Purchaser may elect, by notice delivered at least five Business Days prior to Closing, to assign its rights under this Agreement to an Affiliate for the purpose of taking assignment of the Acquired Leased Real Property in such Affiliate's name; provided that any such assignment shall in no way relieve Purchaser of its obligations under this Agreement.

10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and Seller or (b) waived only in a writing executed by the Party against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

10.6 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than (i) for purposes of Section 6.10, the Seller Parties and, for purposes of Section 10.7, the Non-Recourse Parties and (ii) the Parties hereto and such permitted assigns, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party (each, a "Non-Recourse Party") will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or

for any Agreement Dispute (as defined herein), and (ii) in no event shall any Party have any shared or vicarious liability, or otherwise be the subject of legal or equitable claims, for the actions, omissions or fraud (including through equitable claims (such as unjust enrichment) not requiring proof of wrongdoing committed by the subject of such claims) of any other Person.

10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; provided that each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules, and any disclosure in the Schedules will be deemed a disclosure against any representation or warranty set forth in this Agreement. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Schedules or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item which terms have actually been disclosed in writing on or before the date hereof. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of Contract.

10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the Transactions. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement; provided that the refusal of any such courts refuse to grant specific performance or other equitable relief shall not itself constitute a breach of this clause (a), so long as the applicable Party has otherwise complied with and not made a claim or assertion inconsistent with this Section 10.12, and (b) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither Seller nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order and neither Party will oppose the granting of specific performance or other equitable relief on the basis that the other Party has an adequate remedy at Law. The remedies available to Seller pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and neither Party will claim or assert that the election by the other Party to pursue an injunction or specific performance will restrict, impair, or otherwise limit such other Party from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any action, in each case in accordance with Section 10.13, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (i) for the period during which such action is pending, plus ten Business Days or (ii) by such other time period established by the court presiding over such action, as the case may be.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action of any kind whatsoever, including a counterclaim, cross-claim, or defense, regardless of the legal theory under which any Liability or obligation may be sought to be imposed, whether sounding in contract or in tort or under statute, or whether at law or in equity, or otherwise under any legal or equitable theory, that may be based upon, arising out of, or related to this Agreement or the negotiation, execution, or performance of this Agreement or the Transactions and any questions concerning the construction, interpretation, validity and enforceability of this Agreement

(each, an "Agreement Dispute") brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Court of Chancery of the State of Delaware (or if such court lacks jurisdiction, any other state or federal court sitting in the State of Delaware) (the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any Agreement Dispute. Each of the Parties agrees not to commence any Agreement Dispute except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Courts, and no Party will file a motion to dismiss any Agreement Dispute filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Court, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of any Agreement Dispute. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and any Agreement Dispute will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY AGREEMENT DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY AGREEMENT DISPUTE. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH AGREEMENT DISPUTE WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY AGREEMENT DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the

extent signed and delivered by means of a .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such Contract will raise the use of a .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

10.16 Publicity. Neither Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably conditioned, withheld or delayed, unless, in the reasonable judgment of Purchaser or Seller, as applicable, disclosure is otherwise required of such Party by applicable Law, such disclosure is consistent with (and discloses no substantive terms of the Agreement other than those disclosed in prior permitted releases) or disclosure is required by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Seller (or their respective Affiliates) lists securities; provided that the Party intending to make such release shall use its reasonable efforts consistent with such applicable Law, Bankruptcy Court requirement, or rule to consult with the other Party with respect to the text thereof. Without limiting the foregoing, no Party, without the prior written approval of Seller and Purchaser, shall disclose the Purchase Price, the approximate amount of the Purchase Price, any other financial information from which the approximate amount of the Purchase Price may be determined, or disclose any of the other essential terms of this Agreement, except (a) as required by Law or required for financial reporting purposes and except or (b) to the extent such statements are consistent with, and disclose no substantive terms of this Agreement other than those disclosed in any previous press releases, public disclosures or public statements made jointly by the Parties (or individually), if approved by Seller and Purchaser.

10.17 Bulk Sales Laws. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Encumbrances in the Acquired Assets including any liens or claims arising out of the bulk transfer Laws except Permitted Encumbrances, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the Transactions.

## ARTICLE XI
## ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

11.1 Certain Definitions.

(a) "Action" means any action, complaint, suit, litigation, arbitration, third-party mediation, audit, or proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before any Governmental Body.

(b) "Advisors" means, with respect to any Person as of any relevant time, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

(c) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, affairs and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

(d) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(e) "Business Employee" means each employee of Seller who is primarily engaged in the Transferred Business.

(f) "CCAA" means the *Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36)

(g) "CCAA Court" means the Court of King's Bench of Alberta under Court File No. 2301-07385 with respect to the CCAA Proceeding.

(h) "CCAA Orders" means a Canadian recognition Order of the Sale Order and a Canadian vesting Order for the benefit of the Purchaser with respect to the Acquired Assets, both as granted by the CCAA Court in the CCAA Proceeding pursuant to the CCAA.

(i) "Confidentiality Agreement" means that Mutual Confidentiality and Nondisclosure Agreement, effective as of October 13, 2022, by and between Cyxtera Technologies, LLC and Cologix Canada, Inc.

(j) "Consent" means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(k) "Contract" means any written contract, indenture, note, bond, lease, license, sublease, sublicense, mortgage, agreement, guarantee, or other agreement that is legally binding upon a Person or its property (in each case, including all amendments, supplements, extensions

and other modifications and including all purchase orders, service orders, sales orders, and similar instruments).

(l) "COVID-19" means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemic or disease outbreaks.

(m) "Encumbrance" means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, Orders, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

(n) "Environmental Laws" means all Laws concerning pollution, human health or safety (solely to the extent relating to exposure of any natural Person to Hazardous Materials), or protection of the environment as enacted and in effect as of the date hereof.

(o) "Estoppel Certificate" means, with respect to a Transferred Customer Contract, a document in the form attached hereto as Exhibit D.

(p) "ETA" means Part IX of the *Excise Tax Act* (Canada) (R.S.C., 1985, c. E-15).

(q) "Foreign Representative" means Cyxtera Technologies, Inc.

(r) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(s) "Governmental Authorization" means any Permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(t) "Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether non-U.S., federal, provincial, territorial, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court of applicable jurisdiction.

(u) "GST/HST" means the goods and services Tax and harmonized sales Tax imposed under the ETA.

(v) "Hazardous Material" means any material or substance that is defined as "hazardous" or "toxic" under Environmental Laws due to its dangerous or deleterious properties or characteristics, including petroleum products or byproducts, friable asbestos or polychlorinated biphenyls.

(w) "Knowledge of Seller", or words of like import means the actual knowledge of Mitchell Fonseca and Victor Semah without personal Liability on the part of such individuals.

(x) "Law" means any federal, national, state, provincial, territorial, county, municipal, provincial, local, non-U.S. or multinational, statute, constitution, common law, ordinance, code, decree, Order, judgment, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body of competent jurisdiction.

(y) "Leasehold Improvements" means all buildings, structures, improvements and fixtures which are owned by a Seller and located on any Acquired Leased Real Property, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the lease for such Acquired Leased Real Property.

(z) "Liability" means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(aa) "Material Adverse Effect" means any matter, event, change, development, occurrence, circumstance or effect (each, an "Effect") that has a material adverse effect on the Transferred Business, the Acquired Assets, and the Assumed Liabilities, taken as whole; provided that none of the following (or consequences thereof), either alone or in combination, shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) any Effect in, arising from or relating to general business or economic conditions affecting the industry in which the Transferred Business operates or is conducted, including Effects arising from or relating to competition or ordinary course matters and other Effects within such industry, new entrants into such industry, new products from other participants in such industry, changes in product pricing due to such competition, changes in market share or financial results due to such competition, and other related changes resulting from such competition; (ii) Effects in, arising from or relating to national or international political or social conditions, including tariffs, riots, protests, the engagement by the United States or other countries in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist (whether or not state-sponsored) attack upon the United States or any other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States or of any other country; (iii) Effects in, arising from or relating to any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including COVID-19 or the worsening thereof) or any quarantine or trade restrictions related thereto or any other *force majeure*; (iv) Effects in, arising from or relating to the decline or rise in price of any currency or any equipment or supplies necessary to or used in the provision of services by Seller (including any resulting inability to meet customer demands or fulfill purchase orders and any resulting breaches of Contracts); (v) Effects in, arising from, or relating to financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract, or index, and (D) any increased

cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (vi) Effects in, arising from or relating to changes in, GAAP or the interpretation thereof; (vii) Effects in, arising from or relating to changes in, Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Body and any increase (or decrease) in the terms or enforcement of (or negotiations or disputes with respect to) any of the foregoing; (viii ) Effects in, arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement or at the request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, (C) the compliance by any Party with the terms of this Agreement, including any action taken or refrained from being taken pursuant to or in accordance with this Agreement, or (D) the negotiation, announcement, or pendency of this Agreement or the Transactions, the identity, nature, or ownership of Purchaser or Purchaser's plans with respect to the Transferred Business, the Acquired Assets, or the Assumed Liabilities, including the impact thereof on the relationships, contractual or otherwise, of the business of Seller with employees, customers, lessors, suppliers, vendors, or other commercial partners or litigation arising from or relating to this Agreement or the Transactions; (ix) Effects in, arising from, or relating to any existing event, occurrence or circumstance that is publicly known or disclosed or with respect to which Purchaser has knowledge as of the date hereof, including any matter set forth in the Schedules; (x) Effects in, arising from or relating to any action required to be taken under any existing Contract to which Seller (or any of its assets or properties) is bound; (xi) Effects that arise from any seasonal fluctuations in the business of Seller; (xii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) and any other failure to win or maintain customers or business; (xiii) the Effect of any action taken by Purchaser or its Affiliates with respect to the Transactions or the financing thereof or any breach by Purchaser of this Agreement; (xiv) the matters set forth on the Schedules; or (xv) (A) the commencement or pendency of the Bankruptcy Cases or the CCAA Proceeding; (B) any objections in the Bankruptcy Court or the CCAA Court to (1) this Agreement or any of the Transactions, (2) the Sale Order, the CCAA Order, or the reorganization or liquidation of Seller or (3) the assumption or rejection of any Assigned Contract; or (C) any Order of the Bankruptcy Court or the CCAA Court or any actions or omissions of Seller in compliance therewith; provided that any adverse Effects resulting or arising from the matters described in clauses (i) through (vii) may be taken into account in determining whether there has been a Material Adverse Effect to the extent, and only to the extent, that they have a materially disproportionate adverse effect on the Transferred Business in the aggregate relative to similarly situated participants in the industries and geographic areas in which the Transferred Business operates (in which case only such incremental materially disproportionate adverse effect may be taken into account in determining whether there has been a Material Adverse Effect).

(bb) "Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body of competent jurisdiction, including any order entered by the Bankruptcy Court in the Bankruptcy Cases (including the Sale Order).

(cc) "Ordinary Course" means the ordinary and usual course of operations of the Transferred Business conducted by Seller, taking into account the contemplation, commencement and pendency of the Bankruptcy Cases and the CCAA Proceeding and past practice in light of the current pandemic, epidemic or disease outbreak (including COVID-19); provided that any action

taken, or omitted to be taken, that relates to, or arises out of, any pandemic, epidemic or disease outbreak (including COVID-19) shall be deemed to be in the ordinary course of business.

(dd) "Organizational Documents" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of formation, certificate of limited partnership or articles of organization, and including any certificates of designation for preferred stock or other forms of preferred equity) or which relate to the internal governance of such Person (such as bylaws, a partnership agreement or an operating, limited liability or members agreement).

(ee) "Overhead and Shared Services" means the ancillary, corporate or other shared services or processes that are provided to or used in both (i) the Transferred Business and (ii) any Excluded Assets, including services and processes relating to: travel; meeting management and entertainment; labor; office supplies (including copiers and faxes); personal telecommunications (including email); computer/telecommunications maintenance and support; software application and data hosting services; energy/utilities; procurement and supply arrangements; advertising and marketing; treasury; public relations, legal and regulatory matters; risk management (including workers' compensation); payroll; procurement cards and travel cards; telephone/data connectivity; disaster recovery; accounting; tax; internal audit; executive management; quality control and oversight; product design and engineering; human resources and employee relations management; employee benefits; billing, credit, collections and accounts payable; property management; facility management; site security; asset management; supply chain and manufacturing; global trade compliance; and customs and excise matters.

(ff) "Permits" means all licenses, permits, registrations, certifications, agreements, authorizations, Orders, certificates, qualifications, waivers, approvals, permissions, authorizations, and exemptions pending with or issued by Governmental Bodies, in each case, that is material to the Transferred Business or the Acquired Leased Real Property.

(gg) "Permitted Encumbrances" means (i) Encumbrances for utilities and Taxes not yet due and payable, being contested in good faith, or the nonpayment of which is permitted or required by the Bankruptcy Code, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets and, in the case of the Acquired Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Acquired Leased Real Property as it relates to the operation of the Acquired Assets, (iii) applicable zoning Laws, building codes, land use restrictions, Environmental Laws and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Acquired Leased Real Property, as applicable, (iv) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable, (v) licenses granted on a non-exclusive basis pursuant to any Assigned Contracts, (vi) such other Encumbrances or title exceptions which do not, individually or in the aggregate, materially and adversely affect the operation of the Acquired Assets, (vii) any Encumbrances set forth on Schedule 11.1(gg), and (viii) solely prior to Closing, any Encumbrances that will be removed or released by operation of the Sale Order.

(hh) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, organization, estate, Governmental Body or other entity or group.

(ii) "Pro Rata Portion" means, in the context of Liabilities or Taxes, the fraction of a Liability or Tax attributable to the Straddle Period, the numerator of which is the number of days between the Closing Date and the last day of the Straddle Period, inclusive, and the denominator of which is the total number of days in the Straddle Period. By way of example, if a Straddle Period is coextensive with the calendar year 2023, and the Closing Date occurred on April 10, 2023, the Pro Rata Portion would be (265/365) (representing the number of days between April 10, 2023 and December 31, 2023, divided by the number of days in calendar year 2023).

(jj) "Purchaser Group" means, with respect to Purchaser, Purchaser, any Affiliate of Purchaser and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(kk) "PST" means the provincial sales tax imposed under the PSTA.

(ll) "PSTA" means the *Provincial Sales Tax Act* (British Columbia).

(mm) "QST" means the Quebec sales tax imposed under the QSTA.

(nn) "QSTA" means *An Act respecting the Quebec sales tax*.

(oo) "Sale Order" means an Order of the Bankruptcy Court approving the Transactions, substantially in the form attached hereto as Exhibit B, with such changes as may be reasonably acceptable to the Parties.

(pp) "Seller Parties" means Seller and its former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(qq) "Shared Contract" means any Contract to which Seller is a party and that inures to the benefit or burden of, or otherwise relates to, both (i) the Transferred Business and (ii) any other business of any Seller or any of their Subsidiaries (including any business related to the Excluded Assets).

(rr) "Shared Customer Contract" means any Contract with any customer of Seller or any of its Affiliates to which Seller or any of its Affiliates is a party, and in each case that provides for such customers to receive services from the Transferred Business as well as one or more products or services that are provided by any business or operation pertaining to the Excluded Assets.

(ss) "Straddle Period" means any taxable period that includes but does not end on the Closing Date.

(tt) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company or other entity of which a majority of the total voting power of shares of stock or other equity interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees or other governing body or Person thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(uu) "Tax" or "Taxes" means all U.S. federal, state, local or non-U.S. taxes including any net income, gross receipts, capital stock, franchise, profits, ad valorem, value added, levies, duties, fees, imposts, import, export, withholding, social security, governmental pension, employment insurance, unemployment, disability, workers compensation, real property, personal property, business, development, occupancy, stamp, excise, occupation, PST, consumption sales, use, transfer, land transfer, conveyance, service, registration, premium, windfall or excess profits, customs, duties, licensing, surplus, alternative minimum, estimated, GST/HST, QST or other similar tax, including any interest, penalty, fines or addition thereto.

(vv) "Tax Code" means the United States Internal Revenue Code of 1986, as amended.

(ww) "Tax Return" means any return, report or similar filing (including the attached schedules) filed or required to be filed with respect to Taxes, including any information return, claim for refund, or amended return.

(xx) "Taxing Authority" means any U.S. federal, state, provincial, local or non-U.S. government, any subdivision, agency, commission or authority thereof or any quasi-governmental body exercising Tax regulatory authority.

(yy) "Transaction Agreements" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(zz) "Transactions" means the transactions contemplated by this Agreement and the other Transaction Agreements.

(aaa) "Transferred Business" means collectively the Transferred Montreal Business and the Transferred Vancouver Business.

(bbb) "Transferred Customer Contracts" shall mean all: (i) Contracts of Seller with customers for the provision by Seller of services solely in the Transferred Business (and not, for the avoidance of doubt, services at any location other than the Acquired Leased Real Property); and (ii) the portion of any Shared Customer Contract that provides for the delivery of services in the Transferred Business, it being understood that in no event shall those portions of any Shared Customer Contract providing for the delivery of goods and services at any location other than the Acquired Leased Real Property be considered a Transferred Customer Contract.

(ccc) "Transferred Montreal Business" means the business operations of Seller at the Cyxtera Montreal Data Center located at 3000 Renee Levesque, Montreal, Quebec.

(ddd) "Transferred Vancouver Business" means the business operations of Seller at the Cyxtera Vancouver Data Center located at 555 West Hastings Avenue, Suite 1480 and Suite 2460, Vancouver, British Columbia.

(eee) "Willful Breach" shall mean a deliberate act or a deliberate failure to act regardless of whether breaching was the conscious object of the act or failure to act.

11.2 Index of Defined Terms.



11.3 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, Schedule and exhibit references contained in this Agreement are references to sections, clauses, Schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(c) The words "to the extent" shall mean "the degree by which" and not simply "if."

(d) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(e) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(f) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive.

(g) All references to "$" and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(h) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(i) Any document or item will be deemed "delivered," "provided" or "made available" by Seller, within the meaning of this Agreement if such document or item is (i) delivered or provided to Purchaser or any of Purchaser's Advisors, including by electronic means, or (ii) made available upon request, including at Seller's offices.

(j) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(k) Any reference to any particular Bankruptcy Code or Tax Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Bankruptcy Code or Tax Code section or Law, the reference to such Bankruptcy Code or Tax Code section or Law means such Bankruptcy Code or Tax Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

(l) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and assigns, but only if such successors and assigns are not prohibited by this Agreement.

(m) A reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

[*Signature pages follow*.]

# Appendix “F”

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

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

**KIRKLAND & ELLIS LLP**
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*Co-Counsel for Debtors and Debtors in Possession*

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al* | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

# NOTICE OF ASSUMPTION AND ASSIGNMMENT OF CERTAIN EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES

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

**PARTIES RECEIVING THIS NOTICE SHOULD LOCATE THEIR NAMES AND THEIR CONTRACTS OR LEASES ON SCHEDULE 2 ATTACHED HERETO AND READ THE CONTENTS OF THIS NOTICE CAREFULLY.**

**PLEASE TAKE NOTICE** that on June 29, 2023, the United States Bankruptcy Court for the District of New Jersey (the "Court") entered an order on the motion [Docket No. 79] (the "Motion")[2] of debtors and debtors in possession (the "Debtors"), approving procedures for the rejection, assumption, or assumption and assignment of executory contracts and unexpired leases and granting related relief [Docket No. 186] (the "Procedures Order") attached hereto as **Schedule 1**.

**PLEASE TAKE FURTHER NOTICE** that, contemporaneously herewith, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing Cyxtera Canada to Enter into and Perform its Obligations Under the Cologix Asset Purchase Agreement, (II) Approving the Sale of Certain Canadian Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances, (III) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 653] (the "Canada Sale Motion") seeking entry of an order, substantially in the form attached thereto as Exhibit A and hereto as **Schedule 3** (the "Canada Sale Order"): (a) authorizing and approving the Debtors' entry into and performance under that certain asset purchase agreement by and between Debtor Cyxtera Communications Canada, ULC ("Cyxtera Canada") and Cologix Canada, Inc. ("Cologix"), (b) authorizing and approving the sale of the Acquired Assets free and clear of any and all liens, claims, interests, pledges, charges, defects, caveats, security interests, hypothecations, mortgages, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption,

[2] Capitalized terms used and not otherwise defined herein have the meaning given to them in the Motion or the Canada Sale Motion, as applicable.

privileges, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or similar encumbrances, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise; (c) authorizing the assumption and assignment of the Assigned Contracts set forth on **Schedule 2** attached hereto; and (d) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Procedures Order and by this written notice (this "Assumption and Assignment Notice"), the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that each Assigned Contract set forth on **Schedule 2** attached hereto is hereby assumed and assigned effective as of the Closing Date.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have evaluated the financial wherewithal of Cologix and concluded that Cologix has demonstrated such financial wherewithal to meet all future obligations under the Assigned Contracts, which may be evidenced upon written request,[3] thereby demonstrating that Cologix has the ability to comply with the requirements of adequate assurance of future performance.[4]

**PLEASE TAKE FURTHER NOTICE** that parties seeking to object to the proposed assumption or assumption and assignment of any of the Assigned Contracts must file and serve a written objection so that such objection is filed with the Court on the docket of the Debtors' chapter 11 cases no later than ten (10) days after the date that the Debtors served this Assumption

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[3] To the extent the Debtors seek to assume and assign a lease of non-residential real property, the Debtors will cause evidence of adequate assurance of future performance to be served with this Assumption and Assignment Notice by overnight delivery upon the Assumption Counterparties affected by the Assumption and Assignment Notice.

[4] The Debtors shall serve the counterparty to the Assigned Contract with evidence of adequate assurance upon such counterparty's written request to Debtors' counsel.

and Assignment Notice and promptly serve such objection on the following parties: (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134; (ii) co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. and Derek I. Hunter, and (B) 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 R. Yudkin, Esq.; (iii) the Office of the United States Trustee, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn: David Gerardi; (iv) counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017, Attn: Bradford J. Sandler, Esq., Robert J. Feinstein, Esq., and Paul J. Labov, Esq; and (v) counsel to Cologix, Stikeman Elliott LLP, 1155 René-Lévesque Blvd. West, 41st Floor, Montréal, Québec H3B 3V2, Canada, Attn: Joseph Reynaud. Only those responses that are timely filed, served, and received will be considered at any hearing.

**PLEASE TAKE FURTHER NOTICE** that, absent an objection being timely filed, the assumption and assignment of each Assigned Contract shall become effective on the Closing Date.[5]

**PLEASE TAKE FURTHER NOTICE** that, the proposed cure amount under each Assigned Contract is set forth in **Schedule 2** attached hereto. If a written objection to the proposed

[5] An objection to the assumption or assumption and assignment of any Assigned Contract or cure amount listed in this Assumption and Assignment Notice shall not constitute an objection to the assumption or assumption and assignment of any other contract or lease listed in this Assumption and Assignment Notice. Any objection to the assumption or assumption and assignment of any particular Assigned Contract or cure amount listed in this Assumption and Assignment Notice must state with specificity the Assigned Contract to which it is directed. For each particular Assigned Contract whose assumption or assumption and assignment is not timely or properly objected to, such assumption or assumption and assignment will be effective in accordance with this Assumption and Assignment Notice and the Procedures Order.

cure amount is not timely filed, then the cure amount shall be binding on all parties and no amount in excess thereof shall be paid for cure purposes.

**PLEASE TAKE FURTHER NOTICE** that, if an objection to the assumption or assumption and assignment of any Assigned Contract is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to consider the objection for the Assigned Contract or Assigned Contracts to which such objection relates. If such objection is overruled or withdrawn, such Assigned Contract or Assigned Contracts shall be assumed and assigned as of the Closing Date.

Dated: November 3, 2023

*/s/ Michael D. Sirota*

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

**Schedule 1**

**Procedures 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*

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

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al* | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

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

23148532306290000000000011

**ORDER (I) AUTHORIZING AND APPROVING PROCEDURES TO REJECT OR ASSUME EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

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

**DATED: June 29, 2023**

Honorable John K. Sherwood
United States Bankruptcy Court

Upon the *Debtors' Motion For Entry of an Order (I) Authorizing And Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases, and (II) Granting Related Relief* (the "Motion"),[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing and approving the Contract Procedures for rejecting or assuming executory contracts and unexpired leases, 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.

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

2. The following Rejection Procedures are approved in connection with rejecting Contracts:

a. ***Rejection Notice***. The Debtors shall file a notice substantially in the form attached hereto as Exhibit 1 (the "Rejection Notice") indicating the Debtors' intent to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the names and addresses of the counterparties to such Contract(s) (each a "Rejection Counterparty"); (iii) the proposed effective date of rejection for each such Contract(s) (each, the "Rejection Date"); (iv) if any such Contract is a lease, the personal property to be abandoned (the "Abandoned Property"); (v) with respect to real property, any known third party having an interest in any remaining property, including personal property, furniture, fixtures, and equipment, located at the leased premises; and (vi) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on each Rejection Notice shall be limited to no more than 100. Further, the Rejection Notice shall include the proposed form of order (the "Rejection Order") approving the rejection of the Contracts, which shall be substantially in the form of Exhibit 1-A to the Rejection Notice. No Contract shall be deemed rejected absent entry of an applicable Rejection Order.

b. ***Service of the Rejection Notice***. The Debtors will cause each Rejection Notice to be served: (i) by overnight delivery service upon the Rejection Counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and by email upon such Rejection Counterparty's counsel, if known) and all parties who may have any interest in any Abandoned Property (if known); and (ii) by first class mail, email, or fax, upon (A) the office of the United States Trustee for the District of New Jersey, Attn: David Gerardi; (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 monitor in the CCAA proceeding and counsel thereto; and (J) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Master Notice Parties").

c. ***Objection Procedures***. Parties objecting to a proposed rejection must file and serve a written objection[1] so that such objection is filed with this Court on the docket of the Debtors' chapter 11 cases no later than ten (10) days after the date the Debtors file and serve the relevant Rejection Notice (the "Rejection Objection Deadline") and promptly serve such objection on the following parties (collectively, the "Objection Service Parties"): (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134; (ii) proposed co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. and Derek I. Hunter, and (B) 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 R. Yudkin, Esq.; (iii) Office of The United States Trustee, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn: David Gerardi; and (iv) proposed counsel to the Official Committee of Unsecured Creditors (the "Committee"), Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017, Attn: Bradford J. Sandler, Esq., Robert J. Feinstein, Esq., and Paul J. Labov, Esq.

d. ***No Objection Timely Filed***. If no objection to the rejection of any Contract is timely filed, the Debtors shall file a Rejection Order under a certificate of no objection. Each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the applicable Rejection Counterparty agrees; *provided*, *however*, that the Rejection Date for a rejection of a lease of non-residential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice and (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises.

e. ***Unresolved Timely Objections***. If an objection to a Rejection Notice is timely filed and properly served as specified above and not withdrawn or resolved, the Debtors shall schedule a hearing on such objection and shall provide at least ten (10) days' notice of such hearing to the applicable Rejection Counterparty and the other Objection Service Parties. Such

[1] An objection to the rejection of any particular Contract listed on a Rejection Notice shall not constitute an objection to the rejection of any other Contract listed on such Rejection Notice.

Contract will only be deemed rejected upon entry by the Court of a consensual form of Rejection Order resolving the objection as between the objecting party and the Debtors or, if resolution is not reached and/or the objection is not withdrawn, upon further order of the Court and shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date to which the Debtors and the applicable Rejection Counterparty agree, or as ordered by the Court.

f. ***Removal from Schedule***. The Debtors reserve the right to remove any Contract from the schedule to a Rejection Notice at any time prior to the Rejection Date; *provided* that the Debtors shall not remove any Contract from the schedule to a Rejection Notice if they have relinquished control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises as described above and (a) turn over keys, key codes, and security codes, if any, to the affected landlord or (b) notify the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises.

g. ***No Application of Security Deposits***. If the Debtors have deposited monies with a Rejection Counterparty as a security deposit or other arrangement, such Rejection Counterparty may not set off or recoup or otherwise use such deposit without the prior approval of the Court, unless the Debtors and the applicable Rejection Counterparty otherwise agree.

h. ***Abandoned Property***. The Debtors are authorized, but not directed, at any time on or before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract; *provided, however,* that (i) nothing shall modify any requirement under applicable law with respect to removal of any hazardous materials as defined under applicable law from any of the Debtors' leased premises, (ii) to the extent the Debtors seek to abandon personal property that contains "personally identifiable information," as that term is defined in section 101(41A) of the Bankruptcy Code (the "PII"), the Debtors will use commercially reasonable efforts to remove the PII from such personal property before abandonment, and (iii) within three (3) business days of filing a Rejection Notice, the Debtors will make reasonable efforts to contact any third parties that may be known to the Debtors to have a property interest in the Abandoned Property and ask such third parties to remove or cause to be removed personal property, if any, from the premises prior to the Rejection Date. The Debtors shall generally describe the property in the Rejection Notice and their intent to abandon such property. Absent a timely objection, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned

pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. After the Rejection Date, Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without notice or liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition; *provided* that applicable state law shall govern any rights of the Landlord and any party claiming an interest in any abandoned personal property.

i. ***Proofs of Claim***. Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) 30 days after the later of (A) the date of entry of the Rejection Order approving rejection of the applicable Contract, and (B) the Rejection Date. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

3. The following Assumption Procedures are approved in connection with assuming and assuming and assigning Contracts:

a. ***Assumption Notice***. The Debtors shall file a notice substantially in the form attached hereto as Exhibit 2 (the "Assumption Notice") indicating the Debtors' intent to assume a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which shall set forth, among other things: (i) the Contract or Contracts to be assumed; (ii) the names and addresses of the counterparties to such Contracts (each an "Assumption Counterparty"); (iii) the identity of the proposed assignee of such Contracts (the "Assignee"), if applicable; (iv) the effective date of the assumption for each such Contract (the "Assumption Date"); (v) the proposed cure amount, if any for each such Contract; (vi) a description of any material amendments to the Contract made outside of the ordinary course of business; and (vii) the deadlines and procedures for filing objections to the Assumption Notice (as set forth below). The Assumption Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on each Assumption Notice shall be limited to no more than 100. Further, the Assumption Notice shall include the proposed form of order (the "Assumption Order") approving the rejection of the Contracts, which shall be substantially in the form of Exhibit 2-A to the Assumption Notice. No Contract shall be deemed assumed absent entry of an applicable Assumption Order.

b. ***Service of the Assumption Notice and Evidence of Adequate Assurance***. The Debtors will cause the Assumption Notice to be served (i) by overnight delivery upon the Assumption Counterparties affected by the Assumption Notice and each Assignee, if applicable, at the address set forth in the notice provision of the applicable Contract (and by email upon the Assumption Counterparties' counsel, if known) and (ii) by first class mail, email, or fax upon the Master Notice Parties. To the extent the Debtors seek to assume and assign a Contract, if requested by the Assumption Counterparty or counsel thereto, the Debtors will cause evidence of adequate assurance of future performance to be served as soon as reasonably practicable upon the Assumption Counterparties affected by the Assumption Notice at the address set forth in the notice provision of the applicable Contract (and upon the Assumption Counterparties' counsel, if known, by electronic mail).

c. ***Objection Procedures***. Parties objecting to a proposed assumption or assumption and assignment (including as to the cure amount), as applicable, of a Contract must file and serve a written objection[2] so that such objection is filed with this Court and actually received by the Objection Service Parties no later than ten (10) days after the date the Debtors file and serve the relevant Assumption Notice and promptly serve such objection on the Objection Service Parties.

d. ***No Objection***. If no objection to the assumption of any Contract is timely filed, the Debtors shall file an Assumption Order under a certificate of no objection. Each Contract shall be assumed as of the Assumption Date set forth in the applicable Assumption Notice or such other date as the Debtors and the applicable Assumption Counterparties agree and the proposed cure amount shall be binding on all counterparties to such Contract and no amount in excess thereof shall be paid for cure purposes.

e. ***Unresolved Timely Objections***. If an objection to an Assumption Notice is timely filed and properly served as specified above and not withdrawn or resolved, the Debtors shall schedule a hearing on such objection and shall provide at least ten (10) days' notice of such hearing to the applicable Assumption Counterparty and the other Objection Service Parties. Such Contract will only be deemed assumed upon entry by the Court of a consensual form of Assumption Order resolving the objection as between the objecting party and the Debtors or, if resolution is not reached and/or the objection is not withdrawn, upon further order of the Court and shall be assumed as of the Assumption Date set forth in the Assumption Notice or

[2] An objection to the assumption of any particular Contract listed on an Assumption Notice shall not constitute an objection to the assumption of any other Contract listed on such Assumption Notice.

such other date to which the Debtors and the counterparty to such Contract have agreed, or as ordered by the Court.

f. ***Removal from Schedule***. The Debtors reserve the right to remove any Contract from the schedule to an Assumption Notice at any time prior to the Assumption Date (including, without limitation, upon the failure of any proposed assumption and assignment to close).

4. With regard to Contracts to be assigned, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the assignment of any Contract shall: (a) be free and clear of (i) all liens (and any liens shall attach to the proceeds in the same order and priority subject to all existing defenses, claims, setoffs, and rights) and (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guaranties of or by the Debtors, debts, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, claims and encumbrances that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of any Debtor or Assignee, as the case may be, in the Contract(s) (but only in connection with the assignment by the Debtor to the Assignee)), *provided*, *however*, that any such assignment shall not be free and clear of any accrued but unbilled or not due rent and charges under a lease of non-residential real property including adjustments, reconciliations and indemnity obligations, liability for which shall be assumed by the Debtors or the applicable Assignee, as agreed by and among the Debtors and the applicable Assignee; and (b) constitutes a legal, valid, and effective transfer of such Contract(s) and vests the

applicable Assignee with all rights, titles, and interests to the applicable Contracts.[3] For the avoidance of doubt, all provisions of the applicable assigned Contract, including any provision limiting assignment, shall be binding on the applicable Assignee.

5. Subject to and conditioned upon the occurrence of a closing with respect to the assumption and assignment of any Contract, and subject to the other provisions of this Order (including the aforementioned Assumption Procedures), the Debtors are hereby authorized in accordance with sections 365(b) and (f) of the Bankruptcy Code to (a) assume and assign to any Assignees the applicable Contracts, with any applicable Assignee being responsible only for the post-assignment liabilities or defaults under the applicable Contracts except as otherwise provided for in this Order and (b) execute and deliver to any applicable Assignee such assignment documents as may be reasonably necessary to sell, assign, and transfer any such Contract.

6. The Debtors' right to assert that any provisions in the Contract that expressly or effectively restrict, prohibit, condition, or limit the assignment of or the effectiveness of such Contract to an Assignee are unenforceable anti-assignment or *ipso facto* clauses is fully reserved.

7. The Assignee shall have no liability or obligation with respect to defaults relating to the assigned Contracts arising, accruing, or relating to a period prior to the applicable closing date.

8. The Debtors are hereby authorized, pursuant to section 363(b) of the Bankruptcy Code, to enter into the consensual amendments as set forth in an Assumption Notice.

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[3] Certain of the Contracts may contain provisions that restrict, prohibit, condition, or limit the assumption and/or assignment of such Contract. The Debtors reserve all rights with respect to the enforceability of such provisions.

9. Approval of the Contract Procedures and this Order will not prevent the Debtors from seeking to reject or assume a Contract by separate motion.

10. Nothing contained in the Motion or this Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Order), is intended as or shall be construed or deemed to be: (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 or adopt 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, or adoption 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.

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").

12. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a Contract rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently assert that any particular Contract is expired or terminated and is no longer an executory contract or unexpired lease, respectively.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion, the Rejection Notices, and the Assumption Notices.

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

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 Order.

## Schedule 2

### Assigned Contracts

| Assumption Counterparty | Description of Contract[1] | Cure Amount | Assignee |
|---|---|---|---|
| 3menatwork | Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| 3menatwork | Savvis Master Services Agreement | $0 | Cologix Canada, Inc. |
| 3menatwork | Savvis Service Schedule | $0 | Cologix Canada, Inc. |
| 3menatwork | Savvis Service Level Attachment – Colocation Services Service Level Agreement | $0 | Cologix Canada, Inc. |
| 9403-4338 dba Oxio | Service Order No. Q-38845-3 | $0 | Cologix Canada, Inc. |
| 9403-4338 dba Oxio | Service Order No. Q-38845-3 | $0 | Cologix Canada, Inc. |
| 9403-4338 dba Oxio | Service Order No. Q-41661-1 | $0 | Cologix Canada, Inc. |
| Adaptiv Networks | Service Order No. Q-48112-1 | $0 | Cologix Canada, Inc. |
| Adaptiv Networks | Service Order No. Q-54844-1 | $0 | Cologix Canada, Inc. |
| Advanced Knowledge Networks Inc. | Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| Advanced Knowledge Networks Inc. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Advanced Knowledge Networks Inc. | Service Schedule | $0 | Cologix Canada, Inc. |
| Advanced Knowledge Networks Inc. | Service Level Attachment - Colocation Services Service Level Agreement | $0 | Cologix Canada, Inc. |
| Akamai Technologies, Inc. | Colocation Service Schedule | $0 | Cologix Canada, Inc. |
| Akamai Technologies, Inc. | Master Agreement | $0 | Cologix Canada, Inc. |
| Akamai Technologies, Inc. | Service Order No. Q-25007-5 | $0 | Cologix Canada, Inc. |

[1] The inclusion of a Contract on this list does not constitute an admission as to the executory or non-executory nature of the Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Contract.

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| Alea Software Ltd dba Firefly Software Ltd | Service Order No. Q-51344-2 | $0 | Cologix Canada, Inc. |
| Alea Software Ltd dba Firefly Software Ltd | Service Order No. Q-51344-2 | $0 | Cologix Canada, Inc. |
| Allstream Inc. | CenturyLink Master Services Agreement | $0 | Cologix Canada, Inc. |
| Allstream Inc. | CenturyLink Service Schedule | $0 | Cologix Canada, Inc. |
| ALS Canada Ltd. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| ALS Canada Ltd. | Service Order No. Q-12469-1 | $0 | Cologix Canada, Inc. |
| ALS Canada Ltd. | Service Schedule | $0 | Cologix Canada, Inc. |
| ALS Canada Ltd. | SLA Attachment - Colocation / Bandwidth Connection | $0 | Cologix Canada, Inc. |
| AT&T Corporate Real Estate | Third Expansion Agreement in Relation to the Sublease and Services Agreement | $0 | Cologix Canada, Inc. |
| AT&T Corporate Real Estate | Deed of Variation in Relation to Sublease and Services Agreement | $0 | Cologix Canada, Inc. |
| AT&T Global Network Services Canada Co. | Sublease and Services Agreement | $0 | Cologix Canada, Inc. |
| AT&T Global Services Canada Co. | Amending Agreement | $0 | Cologix Canada, Inc. |
| AT&T Global Services Canada Co. | Expansion Agreement in Relation to the Lease and Services Agreement | $0 | Cologix Canada, Inc. |
| AT&T Global Services Canada Co. | Second Expansion Agreement in Relation to the Sublease and Services Agreement | $0 | Cologix Canada, Inc. |
| AT&T Global Services Canada Co. | Service Order No. Q-45018-1 | $0 | Cologix Canada, Inc. |
| AT&T Global Services Canada Co. | Service Order No. Q-45020-1 | $0 | Cologix Canada, Inc. |
| Bandwidth Communications Canada Inc. | Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| Bandwidth Inc. | Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| Bandwidth Inc. | Colocation Service Schedule | $0 | Cologix Canada, Inc. |
| Bandwidth Inc. | Colocation Service Schedule | $0 | Cologix Canada, Inc. |
| Bandwidth Inc. | Master Agreement | $0 | Cologix Canada, Inc. |
| Bandwidth Inc. | Master Agreement | $0 | Cologix Canada, Inc. |

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| Bespoke Software, Inc. | Service Order No. Q-09532-3 | $0 | Cologix Canada, Inc. |
| Bespoke Software, Inc. | Service Order No. Q-09532-3 | $0 | Cologix Canada, Inc. |
| Blockchains Development Labs, Inc. | Service Order No. Q-37316-1 | $0 | Cologix Canada, Inc. |
| Blockchains, Inc. | Master Agreement | $0 | Cologix Canada, Inc. |
| C & W Worldwide Americas Operations, Inc. | First Amendment to Master Service Agreement | $0 | Cologix Canada, Inc. |
| C & W Worldwide Americas Operations, Inc. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| C3 Solutions | Master Services Agreement | $0 | Cologix Canada, Inc. |
| C3 Solutions | Service Order No. Q-05918-1 | $0 | Cologix Canada, Inc. |
| C3 Solutions | Service Order No. Q-06429-2 | $0 | Cologix Canada, Inc. |
| C3 Solutions | Service Order No. Q-43322-2 | $0 | Cologix Canada, Inc. |
| C3 Solutions | Service Order No. Q-45151-2 | $0 | Cologix Canada, Inc. |
| C3 Solutions | Service Schedule | $0 | Cologix Canada, Inc. |
| Centrilogic, Inc. | Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| Centrilogic, Inc. | Service Order No. Q-54415-1 | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | CenturyLink Total Advantage Express Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Service Order No. Q-52316-3 | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | First Amendment to Master Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Master Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Second Amendment to Master Agreement Dated July 10, 2020 | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Amendment No. 1 to Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Amendment No. 2 to Master Reseller Agreement | $0 | Cologix Canada, Inc. |

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| CenturyLink Communications, LLC | Fifth Amendment to Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Fourth Amendment to Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Seventh Amendment to Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Sixth Amendment to Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| CenturyLink Communications, LLC | Third Amendment to Master Reseller Agreement | $0 | Cologix Canada, Inc. |
| Charles River Systems, Inc. DBA Charles River Development | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Charles River Systems, Inc. DBA Charles River Development | Service Order No. Q-44254-1 | $0 | Cologix Canada, Inc. |
| Charles River Systems, Inc. DBA Charles River Development | Service Schedule | $0 | Cologix Canada, Inc. |
| Cisco Corporation | Qwest Total Advantage Agreement - Option Z | $0 | Cologix Canada, Inc. |
| Cisco Systems Canada | Service Order No. Q-35848-1 | $0 | Cologix Canada, Inc. |
| Cisco Systems Canada | Service Order No. Q-47898-1 | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 1 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 10 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 11 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 12 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 13 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |

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| Cisco Systems, Inc. | Amendment No. 14 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 15 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 16 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 17 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 18 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 19 to Qwest Total Advantage Agreement - EZ - Monthly Assessment | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 2 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 20 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 21 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 22 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 23 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 24 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 27 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 28 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 29 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 3 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 30 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 31 to CenturyLink Total Advantage Agreement | $0 | Cologix Canada, Inc. |

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| Cisco Systems, Inc. | Amendment No. 4 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 5 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 6 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 7 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 8 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cisco Systems, Inc. | Amendment No. 9 to Qwest Total Advantage Agreement | $0 | Cologix Canada, Inc. |
| Cloudflare, Inc | Service Order No. Q-38444-1 | $0 | Cologix Canada, Inc. |
| Cloudflare, Inc | Colocation Service Schedule | $0 | Cologix Canada, Inc. |
| Cloudflare, Inc | Master Agreement | $0 | Cologix Canada, Inc. |
| Cogent Communications, Inc | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Cogent Communications, Inc | Service Schedule | $0 | Cologix Canada, Inc. |
| CT Payment Inc. | CenturyLink Master Services Agreement | $0 | Cologix Canada, Inc. |
| CT Payment Inc. | First Amendment to Service Schedule | $0 | Cologix Canada, Inc. |
| CT Payment Inc. | Payment Card Industry Cardholder Data Addendum | $0 | Cologix Canada, Inc. |
| CT Payment Inc. | Ratification of Master Services Agreement | $0 | Cologix Canada, Inc. |
| CT-Payment Inc. | CenturyLink Service Schedule | $0 | Cologix Canada, Inc. |
| Cubic Transportation Systems | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Cubic Transportation Systems | Service Order No. Q-13210-1 | $0 | Cologix Canada, Inc. |
| Cubic Transportation Systems | Service Order No. Q-20450-1 | $0 | Cologix Canada, Inc. |
| Cubic Transportation Systems | Service Schedule | $0 | Cologix Canada, Inc. |
| Domino's Pizza of Canada Ltd. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Domino's Pizza of Canada Ltd. | SAVVIS Master Services Agreement | $0 | Cologix Canada, Inc. |
| Domino's Pizza of Canada Ltd. | SAVVIS Service Schedule | $0 | Cologix Canada, Inc. |
| Domino's Pizza of Canada Ltd. | Service Order No. Q-12488-1 | $0 | Cologix Canada, Inc. |

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| Domino's Pizza of Canada Ltd. | Service Order No. Q-38549-1 | $0 | Cologix Canada, Inc. |
| Domino's Pizza of Canada Ltd. | Service Order No. Q-38807-1 | $0 | Cologix Canada, Inc. |
| Domino's Pizza of Canada Ltd. | Service Order No. Q-52506-1 | $0 | Cologix Canada, Inc. |
| Dynacare-Gamma Laboratory Partnership | Service Order No. Q-02173-1 | $0 | Cologix Canada, Inc. |
| Dynacare-Gamma Laboratory Partnership | Service Order No. Q-02173-1 | $0 | Cologix Canada, Inc. |
| Equinix Canada Ltd. | Service Order No. Q-38390-1 | $0 | Cologix Canada, Inc. |
| Equinix Canada Ltd. | Service Order No. Q-38393-1 | $0 | Cologix Canada, Inc. |
| Equinix Canada Ltd. | Service Order No. Q-47274-3 | $0 | Cologix Canada, Inc. |
| Equinix Canada Ltd. | Partial Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| Felcom Data Services Inc. | CenturyLink Master Services Agreement | $0 | Cologix Canada, Inc. |
| Felcom Data Services Inc. | CenturyLink Service Schedule | $0 | Cologix Canada, Inc. |
| Felcom Data Services Inc. | Service Order No. Q-11279-1 | $0 | Cologix Canada, Inc. |
| Felcom Data Services Inc. | Service Order No. Q-19146-1 | $0 | Cologix Canada, Inc. |
| Fibernetics Corporation | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Fibernetics Corporation | Service Order No. Q-54837-1 | $0 | Cologix Canada, Inc. |
| Fibernetics Corporation | Service Schedule | $0 | Cologix Canada, Inc. |
| FMD Services Limited Partnership | Service Order No. Q-12483-1 | $0 | Cologix Canada, Inc. |
| FMD Services Limited Partnership | Service Order No. Q-17805-1 | $0 | Cologix Canada, Inc. |
| FMD Services Limited Partnership | Service Order No. Q-40247-1 | $0 | Cologix Canada, Inc. |
| FMD Services Limited Partnership | Cyxtera Service Level Attachment – Colocation Services Service Level Agreement | $0 | Cologix Canada, Inc. |
| Hub International Limited | Service Order No. Q-13465-1 | $0 | Cologix Canada, Inc. |
| Hub International Limited | Service Order No. Q-16699-4 | $0 | Cologix Canada, Inc. |

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| Hub International Limited | Service Order No. Q-34885-2 | $0 | Cologix Canada, Inc. |
| Hub International Limited | Service Order No. Q-36640-1 | $0 | Cologix Canada, Inc. |
| Hub International Limited | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Hub International Limited | Service Schedule | $0 | Cologix Canada, Inc. |
| Hub International Limited | First Amendment to the Master Services Agreement | $0 | Cologix Canada, Inc. |
| Hub International Limited | Service Level Attachment - Colocation Services Service Level Agreement | $0 | Cologix Canada, Inc. |
| Hub International Limited | SLA Attachment - Colocation/Internet Connection SLA | $0 | Cologix Canada, Inc. |
| iBoss, Inc. | CenturyLink Total Advantage Express Agreement | $0 | Cologix Canada, Inc. |
| iBoss, Inc. | Service Order No. Q-44128-3 | $0 | Cologix Canada, Inc. |
| Industrial Alliance Financial Services Inc | Service Order No. Q-11279-1 | $0 | Cologix Canada, Inc. |
| Industrial Alliance Financial Services Inc | Service Order No. Q-19146-1 | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | Amendment to the Master Services Agreement Dated April 30, 2013 | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | Master Service Agreement | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | SAVVIS Service Schedule | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | Service Order No. Q-12492-1 | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | Service Order No. Q-22215-1 | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | Service Order No. Q-22215-1 | $0 | Cologix Canada, Inc. |
| Iron Mountain Information Management, LLC | Service Order No. Q-23866-2 | $0 | Cologix Canada, Inc. |

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| Jungle Disk, LLC, DBA CyberFortress | Amended and Restated Partial Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| Jungle Disk, LLC, DBA CyberFortress | Colocation Service Schedule | $0 | Cologix Canada, Inc. |
| Jungle Disk, LLC, DBA CyberFortress | Master Agreement | $0 | Cologix Canada, Inc. |
| Jungle Disk, LLC, DBA CyberFortress | Service Order No. Q-50410-1 | $0 | Cologix Canada, Inc. |
| JYSK Linen 'N Furniture Inc | CenturyLink Master Services Agreement | $0 | Cologix Canada, Inc. |
| JYSK Linen 'N Furniture Inc | CenturyLink Service Schedule | $0 | Cologix Canada, Inc. |
| JYSK Linen 'N Furniture Inc | Service Order No. Q-11315-1 | $0 | Cologix Canada, Inc. |
| Mservices Limited Partnership | Service Order No. Q-51761-1 | $0 | Cologix Canada, Inc. |
| Mservices Limited Partnership | Service Order No. Q-49152-1 | $0 | Cologix Canada, Inc. |
| Netrium Networks, Inc | Service Order No. Q-12472-1 | $0 | Cologix Canada, Inc. |
| Netrium Networks, Inc | Service Order No. Q-32066-1 | $0 | Cologix Canada, Inc. |
| Netrium Networks, Inc | Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| PayFacto Payments, Inc. f/k/a B2B Payments Inc. | Service Order No. Q-12529-1 | $0 | Cologix Canada, Inc. |
| PayFacto Payments, Inc. f/k/a B2B Payments Inc. | Service Order No. Q-28096-1 | $0 | Cologix Canada, Inc. |
| PayFacto Payments, Inc. f/k/a B2B Payments Inc. | Service Order No. Q-41092-7 | $0 | Cologix Canada, Inc. |
| PayFacto Payments, Inc. f/k/a B2B Payments Inc. | Amendment to Master Services Agreement | $0 | Cologix Canada, Inc. |
| Peopleline Telecom Inc. | Master Service Agreement | $0 | Cologix Canada, Inc. |
| Peopleline Telecom Inc. | Service Order No. Q-40720-1 | $0 | Cologix Canada, Inc. |
| Polaris Realty (Canada) Limited | 555 West Hastings Street, Vancouver - Lease | $142,171.01 | Cologix Canada, Inc. |
| Rogers Cable Communications Inc. | Amendment No. 10 | $0 | Cologix Canada, Inc. |

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| Rogers Cable Communications Inc. | Amendment No. 2 | $0 | Cologix Canada, Inc. |
| Rogers Cable Communications Inc. | Amendment No. 4 | $0 | Cologix Canada, Inc. |
| Rogers Cable Communications Inc. | Amendment No. 5 | $0 | Cologix Canada, Inc. |
| Rogers Cable Communications Inc. | Amendment No. 8 to and Restatement of Master Services Agreement Between Rogers Cable Communications Inc. and Savvis Communications Canada Inc. Successor in Interest to Fusepoint Managed Services Inc. | $0 | Cologix Canada, Inc. |
| Rogers Cable Communications Inc. | Amendment No. 9 | $0 | Cologix Canada, Inc. |
| Rogers Communication Canada, Inc. | Service Order No. Q-17838-1 | $0 | Cologix Canada, Inc. |
| Rogers Communications Inc. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Rogers Communications Partnership | Amendment No. 11 to and Restatement of Master Services Agreement Between Rogers Communications Partnership Successor in Interest to Rogers Cable Communications Inc. and Savvis Communications Canada Inc. | $0 | Cologix Canada, Inc. |
| Rogers Communications Partnership | Amendment No. 12 to Master Services Agreement Between Rogers Communications Partnership and Savvis Communications Canada Inc. | $0 | Cologix Canada, Inc. |
| Rogers Communications Partnership | Amendment No. 13 to Master Services Agreement | $0 | Cologix Canada, Inc. |
| Rogers Communications Partnership | Schedule 8 - Savvis Service Schedule | $0 | Cologix Canada, Inc. |
| ServerMania, Inc | Service Order No. Q-52106-1 | $0 | Cologix Canada, Inc. |
| ServerMania, Inc | Service Order No. Q-53224-1 | $0 | Cologix Canada, Inc. |
| Shaw Telecom G.P. dba Shaw Business | Service Order No. Q-49305-4 | $0 | Cologix Canada, Inc. |

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| Shaw Telecom G.P. dba Shaw Business | Service Order No. Q-51657-1 | $0 | Cologix Canada, Inc. |
| Shaw Telecom G.P. dba Shaw Business | Service Order No. Q-53271-3 | $0 | Cologix Canada, Inc. |
| Shaw Telecom G.P. dba Shaw Business | Service Schedule | $0 | Cologix Canada, Inc. |
| Shaw Telecom G.P. dba Shaw Business | Master Services Agreement | $0 | Cologix Canada, Inc. |
| SWN Communications Inc. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| SWN Communications Inc. | Service Order No. Q-12513-2 | $0 | Cologix Canada, Inc. |
| TATA Communications (Canada) Ltd | Master Services Agreement | $0 | Cologix Canada, Inc. |
| TATA Communications (Canada) Ltd | Service Order No. Q-11294-1 | $0 | Cologix Canada, Inc. |
| TATA Communications (Canada) Ltd | Service Order No. Q-40413-1 | $0 | Cologix Canada, Inc. |
| TATA Communications (Canada) Ltd | Service Order No. Q-42215-1 | $0 | Cologix Canada, Inc. |
| TATA Communications (Canada) Ltd | Service Order No. Q-43777-1 | $0 | Cologix Canada, Inc. |
| TATA Communications (Canada) Ltd | Service Schedule | $0 | Cologix Canada, Inc. |
| Telus Communications | Service Order No. Q-12510-1 | $0 | Cologix Canada, Inc. |
| Telus Communications | Service Order No. Q-39977-2 | $0 | Cologix Canada, Inc. |
| Telus Communications | Service Order No. Q-50094-1 | $0 | Cologix Canada, Inc. |
| Telus Communications | Service Order No. Q-54459-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Amended and Restated Partial Assignment and Assumption Agreement | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Master Services Agreement | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-06891-1 | $0 | Cologix Canada, Inc. |

| | | | |
|---|---|---|---|
| The Electric Mail Company | Service Order No. Q-17723-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-19921-2 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-20508-2 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-23323-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-23343-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-23343-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-24433-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-30261-2 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Order No. Q-51180-1 | $0 | Cologix Canada, Inc. |
| The Electric Mail Company | Service Schedule | $0 | Cologix Canada, Inc. |
| Tidan, Inc. | 3000 Rene Levesque, Montreal - Office Lease | $36,563.75 | Cologix Canada, Inc. |
| United Health Group | Service Order No. Q-49927-3 | $0 | Cologix Canada, Inc. |
| United Health Group | Service Order No. Q-50670-1 | $0 | Cologix Canada, Inc. |
| Vodafone US Operations, Inc. | Amendment to Master Services Agreement | $0 | Cologix Canada, Inc. |
| Wheaton Precious Metals Corp. f/k/a Silver Wheaton Corp | Service Order No. Q-50529-1 | $0 | Cologix Canada, Inc. |
| Wheaton Precious Metals Corp. f/k/a Silver Wheaton Corp | Savvis Master Services Agreement | $0 | Cologix Canada, Inc. |
| Wheaton Precious Metals Corp. f/k/a Silver Wheaton Corp | Savvis Service Schedule | $0 | Cologix Canada, Inc. |
| Wheaton Precious Metals Corp. f/k/a Silver Wheaton Corp | Amendment to Master Services Agreement | $0 | Cologix Canada, Inc. |
| Yardi Systems, Inc. | Master Services Agreement | $0 | Cologix Canada, Inc. |
| Yardi Systems, Inc. | Service Schedule | $0 | Cologix Canada, Inc. |
| Yardi Systems, Inc. | Service Order No. Q-11564-1 | $0 | Cologix Canada, Inc. |
| YMCA BC | Service Order No. Q-11280-1 | $0 | Cologix Canada, Inc. |
| YMCA of Greater Vancouver | Master Services Agreement | $0 | Cologix Canada, Inc. |
| YMCA of Greater Vancouver | Service Schedule | $0 | Cologix Canada, Inc. |

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| YMCA of Greater Vancouver | ATTACHMENT -- MANAGED HOSTING SERVICES | $0 | Cologix Canada, Inc. |
| Zayo Canada Inc. f/k/a Allstream Inc. | Service Order No. Q-55152-3 | $0 | Cologix Canada, Inc. |
| Zayo Canada Inc. f/k/a Allstream Inc. | Amendment One to Master Services Agreement | $0 | Cologix Canada, Inc. |

# Appendix “G”

November 14, 2023

Alvarez & Marsal Canada Inc.
*as information officer in respect of CCAA recognition proceedings of Cyxtera Communications Canada, ULC, and its affiliates*
Bow Valley Square IV
Suite 1110, 250 — 6th Avenue SW
Calgary, Alberta T2P 3H7
Attn: Orest Konowalchuk,
Duncan MacRae
Email: okonowalchuk@alvarezandmarsal.com
dmacrae@alvarezandmarsal.com
*Sent via Email*

*Re*: Contracts to be Assumed (the "**Contracts**") by Cologix Canada, Inc. ("**Cologix**") pursuant to that certain Asset Purchase Agreement dated as of October 30, 2023 (the "**APA**") by and between Cologix, as purchaser, and Cyxtera Communications Canada, ULC ("**Cyxtera**"), as seller.

To Whom It May Concern:

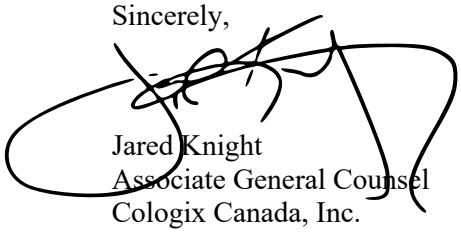
I am writing to confirm Cologix's ability to provide future performance under the Contracts following closing under the APA. Cologix is a leading provider of digital edge and hyperscale data centers in North America, with over 40 facilities located in 11 strategic markets. Since our founding, Cologix has completed 15 acquisitions, resulting in the development of a leading data center platform supporting over 1,600 leading network, MSPs, cloud, media, content, financial, and enterprise customers. Cologix reliably supports these customers' business-critical infrastructure and facilitates connection from their environments to those of their customers, vendors, and partners. Accordingly, we have substantial experience onboarding and supporting customers through acquisitions, and have the resources to ensure all customers have the support and infrastructure they need.

In addition to operational expertise, Cologix is well-capitalized. In 2021, Cologix successfully completed a ~$3 Billion US Dollar equity recapitalization from new and existing investors with a depth of experience in the data center and real estate industries. Our recapitalization is providing long-term support for our development and expansion plans across new and existing markets, including this transaction. In addition to our equity recapitalization, over the past 18 months Cologix has raised ~$2 Billion US Dollar in financing through our ABS supporting Canadian and US facilities.

The acquisition of assets pursuant to the APA aligns with Cologix's existing platform, as the facilities to be acquired are both located in buildings where Cologix currently operates. Accordingly, our operations team is familiar with each facility's infrastructure, connectivity, and personnel, allowing us to quickly resolve problems and support customer requests. Our expertise and experience operating data centers across North America, and specifically in Vancouver and Montreal, will ensure stability and future performance under each of the Contracts.

If you have any questions, or would like any additional information, please do not hesitate to contact me at jared.knight@cologix.com.

Sincerely,



Jared Knight
Associate General Counsel
Cologix Canada, Inc.

cc: Phillip Eck, General Counsel, Cologix, Inc., *via email* phillip.eck@cologix.com
Victor F. Semah, Chief Legal Officer, Cyxtera, *via email* victor.semah@cyxtera.com
Sam Gabor, Gowling WLG International Ltd., *via email* sam.gabor@gowlingwlg.com
Adrian Simioni, Kirkland & Ellis LLP, *via email* adrian.simioni@kirkland.com

# Appendix “H”

Docket #0674 Date Filed: 11/09/2023

**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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Christopher Marcus, P.C. (admitted *pro hac vice*)
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**COLE SCHOTZ P.C.**
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Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

*Co-Counsel for Debtors and Debtors in Possession*

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al* | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

**SUPPLEMENTAL NOTICE OF ASSUMPTION AND ASSIGNMMENT OF CERTAIN EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES**

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

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**PARTIES RECEIVING THIS NOTICE SHOULD LOCATE THEIR NAMES AND THEIR CONTRACTS OR LEASES ON SCHEDULE 2 ATTACHED HERETO AND READ THE CONTENTS OF THIS NOTICE CAREFULLY.**

**PLEASE TAKE NOTICE** that on June 29, 2023, the United States Bankruptcy Court for the District of New Jersey (the "Court") entered an order on the motion [Docket No. 79] (the "Motion") of debtors and debtors in possession (the "Debtors"), approving procedures for the rejection, assumption, or assumption and assignment of executory contracts and unexpired leases and granting related relief [Docket No. 186] (the "Procedures Order") attached hereto as **Schedule 1**.

**PLEASE TAKE FURTHER NOTICE** that on November 3, 2023, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing Cyxtera Canada to Enter into and Perform its Obligations Under the Cologix Asset Purchase Agreement, (II) Approving the Sale of Certain Canadian Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances, (III) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 653] (the "Canada Sale Motion")[2] seeking entry of an order, substantially in the form attached thereto as Exhibit A: (a) authorizing and approving the Debtors' entry into and performance under that certain asset purchase agreement by and between Debtor Cyxtera Communications Canada, ULC ("Cyxtera Canada") and Cologix Canada, Inc. ("Cologix"), (b) authorizing and approving the sale of the Acquired Assets free and clear of any and all liens, claims, interests, pledges, charges, defects, caveats, security interests, hypothecations, mortgages, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, assignments, actions, judgements, executions, levies, taxes, writs

[2] Capitalized terms used and not otherwise defined herein have the meaning given to them in the Motion, the Canada Sale Motion, or the APA, as applicable.

of enforcement, charges, or similar encumbrances, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise; (c) authorizing the assumption and assignment of executory contracts and unexpired leases; and (d) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, on November 3, 2023, the Debtors filed the *Notice of Assumption and Assignment of Certain Executory Contracts and/or Unexpired Leases* [Docket No. 656] (the "Assumption and Assignment Notice"), notifying counterparties to certain of the Assigned Contracts that, pursuant to the Procedures Order and the Assumption and Assignment Notice, the Debtors had determined, in the exercise of their business judgment, that each Assigned Contract set forth on Schedule 2 attached thereto was thereby assumed and assigned effective as of the Closing Date.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Procedures Order and by this written notice (this "Supplemental Assumption and Assignment Notice"), the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that each additional Assigned Contract set forth on **Schedule 2** attached hereto (the "Supplemental Assigned Contracts") is hereby assumed and assigned effective as of the Closing Date.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have evaluated the financial wherewithal of Cologix and concluded that Cologix has demonstrated such financial wherewithal to meet all future obligations under the Supplemental Assigned Contracts, which may be evidenced

upon written request,[3] thereby demonstrating that Cologix has the ability to comply with the requirements of adequate assurance of future performance.[4]

**PLEASE TAKE FURTHER NOTICE** that parties seeking to object to the proposed assumption or assumption and assignment of any of the Supplemental Assigned Contracts must file and serve a written objection so that such objection is filed with the Court on the docket of the Debtors' chapter 11 cases no later than ten (10) days after the date that the Debtors served this Supplemental Assumption and Assignment Notice and promptly serve such objection on the following parties: (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134; (ii) co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. and Derek I. Hunter, and (B) 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 R. Yudkin, Esq.; (iii) the Office of the United States Trustee, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn: David Gerardi; (iv) counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017, Attn: Bradford J. Sandler, Esq., Robert J. Feinstein, Esq., and Paul J. Labov, Esq; and (v) counsel to Cologix, Stikeman Elliott LLP, 1155 René-Lévesque Blvd. West, 41st Floor, Montréal, Québec H3B 3V2, Canada,

---

[3] To the extent the Debtors seek to assume and assign a lease of non-residential real property, the Debtors will cause evidence of adequate assurance of future performance to be served with this Supplemental Assumption and Assignment Notice by overnight delivery upon the counterparties to the applicable Supplemental Assigned Contracts affected by the Supplemental Assumption and Assignment Notice.

[4] The Debtors shall serve the counterparty to the Supplemental Assigned Contract with evidence of adequate assurance upon such counterparty's written request to Debtors' counsel.

Attn: Joseph Reynaud. Only those responses that are timely filed, served, and received will be considered at any hearing.

**PLEASE TAKE FURTHER NOTICE** that, absent an objection being timely filed, the assumption and assignment of each Supplemental Assigned Contract shall become effective on the Closing Date.[5]

**PLEASE TAKE FURTHER NOTICE** that, the proposed cure amount under each Supplemental Assigned Contract is set forth in **Schedule 2** attached hereto. If a written objection to the proposed cure amount is not timely filed, then the cure amount shall be binding on all parties and no amount in excess thereof shall be paid for cure purposes.

**PLEASE TAKE FURTHER NOTICE** that, if an objection to the assumption or assumption and assignment of any Supplemental Assigned Contract is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to consider the objection for the Supplemental Assigned Contract or Supplemental Assigned Contracts to which such objection relates. If such objection is overruled or withdrawn, such Supplemental Assigned Contract or Supplemental Assigned Contracts shall be assumed and assigned as of the Closing Date.

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[5] An objection to the assumption or assumption and assignment of any Supplemental Assigned Contract or cure amount listed in this Supplemental Assumption and Assignment Notice shall not constitute an objection to the assumption or assumption and assignment of any other contract or lease listed in this Supplemental Assumption and Assignment Notice. Any objection to the assumption or assumption and assignment of any particular Supplemental Assigned Contract or cure amount listed in this Supplemental Assumption and Assignment Notice must state with specificity the Supplemental Assigned Contract to which it is directed. For each particular Supplemental Assigned Contract whose assumption or assumption and assignment is not timely or properly objected to, such assumption or assumption and assignment will be effective in accordance with this Supplemental Assumption and Assignment Notice and the Procedures Order.

Dated: November 9, 2023

*/s/ Michael D. Sirota*

**COLE SCHOTZ P.C.**
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wusatine@coleschotz.com
fyudkin@coleschotz.com

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
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Christopher Marcus, P.C. (admitted *pro hac vice*)
Derek I. Hunter (admitted *pro hac vice*)
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christopher.marcus@kirkland.com
derek.hunter@kirkland.com

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

**Schedule 1**

**Procedures Order**

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

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

**KIRKLAND & ELLIS LLP**
**KIRKLAND & ELLIS INTERNATIONAL LLP**
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Christopher Marcus, P.C. (admitted *pro hac vice*)
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**COLE SCHOTZ P.C.**
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msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

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

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

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al* | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

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

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**ORDER (I) AUTHORIZING AND APPROVING PROCEDURES TO REJECT OR ASSUME EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

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

**DATED: June 29, 2023**

Honorable John K. Sherwood
United States Bankruptcy Court

Debtors: CYXTERA TECHNOLOGIES, INC., *et al*.
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief

Upon the *Debtors' Motion For Entry of an Order (I) Authorizing And Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases, and (II) Granting Related Relief* (the "Motion"),[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing and approving the Contract Procedures for rejecting or assuming executory contracts and unexpired leases, 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.

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

2. The following Rejection Procedures are approved in connection with rejecting Contracts:

a. ***Rejection Notice***. The Debtors shall file a notice substantially in the form attached hereto as Exhibit 1 (the "Rejection Notice") indicating the Debtors' intent to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the names and addresses of the counterparties to such Contract(s) (each a "Rejection Counterparty"); (iii) the proposed effective date of rejection for each such Contract(s) (each, the "Rejection Date"); (iv) if any such Contract is a lease, the personal property to be abandoned (the "Abandoned Property"); (v) with respect to real property, any known third party having an interest in any remaining property, including personal property, furniture, fixtures, and equipment, located at the leased premises; and (vi) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on each Rejection Notice shall be limited to no more than 100. Further, the Rejection Notice shall include the proposed form of order (the "Rejection Order") approving the rejection of the Contracts, which shall be substantially in the form of Exhibit 1-A to the Rejection Notice. No Contract shall be deemed rejected absent entry of an applicable Rejection Order.

b. ***Service of the Rejection Notice***. The Debtors will cause each Rejection Notice to be served: (i) by overnight delivery service upon the Rejection Counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and by email upon such Rejection Counterparty's counsel, if known) and all parties who may have any interest in any Abandoned Property (if known); and (ii) by first class mail, email, or fax, upon (A) the office of the United States Trustee for the District of New Jersey, Attn: David Gerardi; (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 monitor in the CCAA proceeding and counsel thereto; and (J) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Master Notice Parties").

c. ***Objection Procedures***. Parties objecting to a proposed rejection must file and serve a written objection[1] so that such objection is filed with this Court on the docket of the Debtors' chapter 11 cases no later than ten (10) days after the date the Debtors file and serve the relevant Rejection Notice (the "Rejection Objection Deadline") and promptly serve such objection on the following parties (collectively, the "Objection Service Parties"): (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134; (ii) proposed co-counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. and Derek I. Hunter, and (B) 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 R. Yudkin, Esq.; (iii) Office of The United States Trustee, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn: David Gerardi; and (iv) proposed counsel to the Official Committee of Unsecured Creditors (the "Committee"), Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017, Attn: Bradford J. Sandler, Esq., Robert J. Feinstein, Esq., and Paul J. Labov, Esq.

d. ***No Objection Timely Filed***. If no objection to the rejection of any Contract is timely filed, the Debtors shall file a Rejection Order under a certificate of no objection. Each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the applicable Rejection Counterparty agrees; *provided*, *however*, that the Rejection Date for a rejection of a lease of non-residential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice and (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises.

e. ***Unresolved Timely Objections***. If an objection to a Rejection Notice is timely filed and properly served as specified above and not withdrawn or resolved, the Debtors shall schedule a hearing on such objection and shall provide at least ten (10) days' notice of such hearing to the applicable Rejection Counterparty and the other Objection Service Parties. Such

[1] An objection to the rejection of any particular Contract listed on a Rejection Notice shall not constitute an objection to the rejection of any other Contract listed on such Rejection Notice.

Contract will only be deemed rejected upon entry by the Court of a consensual form of Rejection Order resolving the objection as between the objecting party and the Debtors or, if resolution is not reached and/or the objection is not withdrawn, upon further order of the Court and shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date to which the Debtors and the applicable Rejection Counterparty agree, or as ordered by the Court.

f. ***Removal from Schedule***. The Debtors reserve the right to remove any Contract from the schedule to a Rejection Notice at any time prior to the Rejection Date; *provided* that the Debtors shall not remove any Contract from the schedule to a Rejection Notice if they have relinquished control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises as described above and (a) turn over keys, key codes, and security codes, if any, to the affected landlord or (b) notify the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises.

g. ***No Application of Security Deposits***. If the Debtors have deposited monies with a Rejection Counterparty as a security deposit or other arrangement, such Rejection Counterparty may not set off or recoup or otherwise use such deposit without the prior approval of the Court, unless the Debtors and the applicable Rejection Counterparty otherwise agree.

h. ***Abandoned Property***. The Debtors are authorized, but not directed, at any time on or before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract; *provided, however,* that (i) nothing shall modify any requirement under applicable law with respect to removal of any hazardous materials as defined under applicable law from any of the Debtors' leased premises, (ii) to the extent the Debtors seek to abandon personal property that contains "personally identifiable information," as that term is defined in section 101(41A) of the Bankruptcy Code (the "PII"), the Debtors will use commercially reasonable efforts to remove the PII from such personal property before abandonment, and (iii) within three (3) business days of filing a Rejection Notice, the Debtors will make reasonable efforts to contact any third parties that may be known to the Debtors to have a property interest in the Abandoned Property and ask such third parties to remove or cause to be removed personal property, if any, from the premises prior to the Rejection Date. The Debtors shall generally describe the property in the Rejection Notice and their intent to abandon such property. Absent a timely objection, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned

pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. After the Rejection Date, Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without notice or liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition; *provided* that applicable state law shall govern any rights of the Landlord and any party claiming an interest in any abandoned personal property.

i. ***Proofs of Claim***. Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) 30 days after the later of (A) the date of entry of the Rejection Order approving rejection of the applicable Contract, and (B) the Rejection Date. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

3. The following Assumption Procedures are approved in connection with assuming and assuming and assigning Contracts:

a. ***Assumption Notice***. The Debtors shall file a notice substantially in the form attached hereto as Exhibit 2 (the "Assumption Notice") indicating the Debtors' intent to assume a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which shall set forth, among other things: (i) the Contract or Contracts to be assumed; (ii) the names and addresses of the counterparties to such Contracts (each an "Assumption Counterparty"); (iii) the identity of the proposed assignee of such Contracts (the "Assignee"), if applicable; (iv) the effective date of the assumption for each such Contract (the "Assumption Date"); (v) the proposed cure amount, if any for each such Contract; (vi) a description of any material amendments to the Contract made outside of the ordinary course of business; and (vii) the deadlines and procedures for filing objections to the Assumption Notice (as set forth below). The Assumption Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on each Assumption Notice shall be limited to no more than 100. Further, the Assumption Notice shall include the proposed form of order (the "Assumption Order") approving the rejection of the Contracts, which shall be substantially in the form of Exhibit 2-A to the Assumption Notice. No Contract shall be deemed assumed absent entry of an applicable Assumption Order.

b. ***Service of the Assumption Notice and Evidence of Adequate Assurance***. The Debtors will cause the Assumption Notice to be served (i) by overnight delivery upon the Assumption Counterparties affected by the Assumption Notice and each Assignee, if applicable, at the address set forth in the notice provision of the applicable Contract (and by email upon the Assumption Counterparties' counsel, if known) and (ii) by first class mail, email, or fax upon the Master Notice Parties. To the extent the Debtors seek to assume and assign a Contract, if requested by the Assumption Counterparty or counsel thereto, the Debtors will cause evidence of adequate assurance of future performance to be served as soon as reasonably practicable upon the Assumption Counterparties affected by the Assumption Notice at the address set forth in the notice provision of the applicable Contract (and upon the Assumption Counterparties' counsel, if known, by electronic mail).

c. ***Objection Procedures***. Parties objecting to a proposed assumption or assumption and assignment (including as to the cure amount), as applicable, of a Contract must file and serve a written objection[2] so that such objection is filed with this Court and actually received by the Objection Service Parties no later than ten (10) days after the date the Debtors file and serve the relevant Assumption Notice and promptly serve such objection on the Objection Service Parties.

d. ***No Objection***. If no objection to the assumption of any Contract is timely filed, the Debtors shall file an Assumption Order under a certificate of no objection. Each Contract shall be assumed as of the Assumption Date set forth in the applicable Assumption Notice or such other date as the Debtors and the applicable Assumption Counterparties agree and the proposed cure amount shall be binding on all counterparties to such Contract and no amount in excess thereof shall be paid for cure purposes.

e. ***Unresolved Timely Objections***. If an objection to an Assumption Notice is timely filed and properly served as specified above and not withdrawn or resolved, the Debtors shall schedule a hearing on such objection and shall provide at least ten (10) days' notice of such hearing to the applicable Assumption Counterparty and the other Objection Service Parties. Such Contract will only be deemed assumed upon entry by the Court of a consensual form of Assumption Order resolving the objection as between the objecting party and the Debtors or, if resolution is not reached and/or the objection is not withdrawn, upon further order of the Court and shall be assumed as of the Assumption Date set forth in the Assumption Notice or

[2] An objection to the assumption of any particular Contract listed on an Assumption Notice shall not constitute an objection to the assumption of any other Contract listed on such Assumption Notice.

such other date to which the Debtors and the counterparty to such Contract have agreed, or as ordered by the Court.

f. ***Removal from Schedule***. The Debtors reserve the right to remove any Contract from the schedule to an Assumption Notice at any time prior to the Assumption Date (including, without limitation, upon the failure of any proposed assumption and assignment to close).

4. With regard to Contracts to be assigned, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the assignment of any Contract shall: (a) be free and clear of (i) all liens (and any liens shall attach to the proceeds in the same order and priority subject to all existing defenses, claims, setoffs, and rights) and (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guaranties of or by the Debtors, debts, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, claims and encumbrances that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of any Debtor or Assignee, as the case may be, in the Contract(s) (but only in connection with the assignment by the Debtor to the Assignee)), *provided*, *however*, that any such assignment shall not be free and clear of any accrued but unbilled or not due rent and charges under a lease of non-residential real property including adjustments, reconciliations and indemnity obligations, liability for which shall be assumed by the Debtors or the applicable Assignee, as agreed by and among the Debtors and the applicable Assignee; and (b) constitutes a legal, valid, and effective transfer of such Contract(s) and vests the

applicable Assignee with all rights, titles, and interests to the applicable Contracts.[3] For the avoidance of doubt, all provisions of the applicable assigned Contract, including any provision limiting assignment, shall be binding on the applicable Assignee.

5. Subject to and conditioned upon the occurrence of a closing with respect to the assumption and assignment of any Contract, and subject to the other provisions of this Order (including the aforementioned Assumption Procedures), the Debtors are hereby authorized in accordance with sections 365(b) and (f) of the Bankruptcy Code to (a) assume and assign to any Assignees the applicable Contracts, with any applicable Assignee being responsible only for the post-assignment liabilities or defaults under the applicable Contracts except as otherwise provided for in this Order and (b) execute and deliver to any applicable Assignee such assignment documents as may be reasonably necessary to sell, assign, and transfer any such Contract.

6. The Debtors' right to assert that any provisions in the Contract that expressly or effectively restrict, prohibit, condition, or limit the assignment of or the effectiveness of such Contract to an Assignee are unenforceable anti-assignment or *ipso facto* clauses is fully reserved.

7. The Assignee shall have no liability or obligation with respect to defaults relating to the assigned Contracts arising, accruing, or relating to a period prior to the applicable closing date.

8. The Debtors are hereby authorized, pursuant to section 363(b) of the Bankruptcy Code, to enter into the consensual amendments as set forth in an Assumption Notice.

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[3] Certain of the Contracts may contain provisions that restrict, prohibit, condition, or limit the assumption and/or assignment of such Contract. The Debtors reserve all rights with respect to the enforceability of such provisions.

9. Approval of the Contract Procedures and this Order will not prevent the Debtors from seeking to reject or assume a Contract by separate motion.

10. Nothing contained in the Motion or this Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Order), is intended as or shall be construed or deemed to be: (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 or adopt 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, or adoption 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.

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").

12. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a Contract rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently assert that any particular Contract is expired or terminated and is no longer an executory contract or unexpired lease, respectively.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion, the Rejection Notices, and the Assumption Notices.

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

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 Order.

## Schedule 2

### Supplemental Assigned Contracts

| Assumption Counterparty | Description of Contract[1] | Cure Amount | Assignee |
|---|---|---|---|
| Harbour Centre Complex Limited | License to Occupy - dated 05 / 26 / 2005 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Agreement Renewal - dated 04 / 29 / 2008 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | License to Occupy - dated 12 / 29 / 2009 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Agreement Renewal - dated 06 / 24 / 2011 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Agreement Renewal - dated 04 / 19 / 2013 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Renewal - dated 04 / 19 / 2013 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Renewal - dated 02 / 17 / 2017 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | License to Occupy (Cyxtera C31) - dated 04 / 01 / 2019 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Renewal - dated 09 / 13 / 2019 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Emergency Power Request and Release Form – MMR6A | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Emergency Power Request and Release Form – MMR 6B | $0 | Cologix Canada, Inc. |
| Polaris Realty (Canada) Limited | Letter Agreement re: License to Occupy (C - 31) Renewal - dated 05 / 01 / 2023 | $0 | Cologix Canada, Inc. |

[1] The inclusion of a Supplemental Assigned Contract on this list does not constitute an admission as to the executory or non-executory nature of the Supplemental Assigned Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Supplemental Assigned Contract.

**Schedule 3**

**Proposed Assumption and Assignment Order**

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

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

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*Co-Counsel for Debtors and Debtors in Possession*

| | |
|---|---|
| In re: | Chapter 11 |
| CYXTERA TECHNOLOGIES, INC., *et al* | Case No. 23-14853 (JKS) |
| Debtors.[1] | (Jointly Administered) |

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

**ORDER APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES IN CONNECTION WITH THE SALE OF CERTAIN CANADIAN ASSETS BY CYXTERA CANADA**

The relief set forth on the following pages, numbered three (3) through eleven (11), is **ORDERED**.

Upon the *Debtors' Motion for Entry of an Order (I) Authorizing Cyxtera Canada to Enter into and Perform its Obligations Under the Cologix Asset Purchase Agreement, (II) Approving the Sale of Certain Canadian Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances, (III) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 653] (the "Canada Sale Motion") and the *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 186] (the "Procedures Order")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and the hearing to consider the Canada Sale Motion having been held on November 16, 2023 (the "Canada Sale Hearing"); and the Court having jurisdiction over this matter 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 matter in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Debtors having properly filed and served the *Supplemental Notice of Assumption and Assignment of Certain Executory Contracts and/or Unexpired Leases* [Docket No. [●]] (the "Supplemental Assumption and Assignment Notice") on each applicable party as set forth in

[2] Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion, the APA (as defined in the Motion), the Canada Sale Order (as defined herein), or the Procedures Order, as applicable.

the schedule attached hereto as **Exhibit 1** (the "Assumption and Assignment Schedule"), in accordance with the terms of the Procedures Order; and no timely objections have been filed to the assumption and assignment of the additional Assigned Contracts set forth in the Assumption and Assignment Schedule (the "Supplemental Assigned Contracts"); and due and proper notice of the Procedures Order and the Supplemental Assumption and Assignment Notice having been provided to each applicable counterparty to the Supplemental Assigned Contracts as set forth in the Assumption and Assignment Schedule and it appearing that no other notice need be provided; and after due deliberation and sufficient cause appearing therefor **THE COURT HEREBY FINDS THAT**:[3]

A. The assumption and assignment of the Supplemental Assigned Contracts listed in the Assumption and Assignment Schedule attached hereto as **Exhibit 1** pursuant to the terms of the *Order (I) Authorizing Cyxtera Canada to Enter into and Perform its Obligations Under the Cologix Asset Purchase Agreement, (II) Approving the Sale of Certain Canadian Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances, (III) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. [●]] (the "Canada Sale Order") and this Order is integral to the APA, does not constitute unfair discrimination, and is in the best interests of the Debtors and their estates, their creditors, and all other parties in interest, and represents the reasonable exercise of sound and

[3] The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

prudent business judgment by the Debtors. Subject to the terms and conditions of the APA and the Canada Sale Order, the Debtors shall: (a) to the extent necessary, cure or provide adequate assurance of cure, of any default existing prior to the date hereof with respect to the Supplemental Assigned Contracts, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (b) to the extent necessary, provide compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Supplemental Assigned Contracts, within the meaning of sections 365(b)(1)(B) and 365(f)(2)(A) of the Bankruptcy Code. The Debtors' promise to pay or otherwise cure all defaults or other obligations of the Debtors under the Supplemental Assigned Contracts arising or accruing prior to the Closing Date, or otherwise required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Supplemental Assigned Contracts (collectively, the "Cure Costs") in accordance with the terms of the APA, the Canada Sale Order, and this Order and Cologix Canada, Inc.'s (the "Purchaser") promise to perform the obligations under the Supplemental Assigned Contracts shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Supplemental Assigned Contracts.

B. Under the circumstances, the Debtors have demonstrated that assuming and assigning the Supplemental Assigned Contracts in connection with the Canada Sale is an exercise of their sound business judgment, and that such assumption and assignment is in the best interests of the Debtors' estates, for the reasons set forth in the Canada Sale Motion, the Li Declaration, and

on the record at the Canada Sale Hearing, including, without limitation, because the assumption and assignment of the Supplemental Assigned Contracts in connection with the Canada Sale is a material component to the overall consideration provided by the Purchaser and will maintain the ongoing business of the Debtors, limit the losses of counterparties to Supplemental Assigned Contracts, and maximize the distribution to creditors of the Debtors.

C. The assignment of the Supplemental Assigned Contracts is necessary and appropriate under the circumstances in connection with the Canada Sale, is integral to the Debtors' overall restructuring efforts, and the Purchaser has demonstrated that it can reasonably carry on the obligations under the Supplemental Assigned Contracts.

**IT IS HEREBY ORDERED THAT:**

1. Cyxtera Canada Communications, ULC (the "Seller") is hereby authorized and directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code and the Procedures Order to (a) assume and assign to the Purchaser, in accordance with the terms of the APA and this Canada Sale Order, the Supplemental Assigned Contracts free and clear of all Claims, Encumbrances, and Interests (other than the Permitted Encumbrances and Assumed Liabilities), and (b) execute and deliver to the Purchaser such documents or other instruments as the Purchaser deems may be necessary to assign and transfer the Supplemental Assigned Contracts to the Purchaser.

2. With respect to the Supplemental Assigned Contracts: (a) the Seller may assume each of the Supplemental Assigned Contracts in accordance with section 365 of the Bankruptcy Code; (b) the Seller may assign each of the Supplemental Assigned Contracts to the

Purchaser in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any of the Supplemental Assigned Contracts that prohibit or condition the assignment of such Supplemental Assigned Contract or allow the party to such Supplemental Assigned Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Supplemental Assigned Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (c) subject to the Debtors payment of Cure Costs, all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Seller and assignment to Purchaser of each Supplemental Assigned Contract have been satisfied; and (d) the Supplemental Assigned Contracts shall be transferred and assigned to, and following the Closing remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Supplemental Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Supplemental Assigned Contracts after such assumption and assignment to the Purchaser.

3. Any Supplemental Assigned Contract shall be assumed by the Seller and assigned to the Purchaser in accordance with the Assumption Procedures as defined in the Procedures Order, which Assumption Procedures are incorporated herein by reference and shall apply and be binding to any Supplemental Assigned Contract. The pendency of a dispute relating to a particular Supplemental Assigned Contract shall not delay the assumption and assignment of any other Supplemental Assigned Contract or the Closing. Any proposed cure amount to be included in the

Supplemental Assumption and Assignment Notice or the resolution of any objection filed in connection therewith will be acceptable to the Purchaser and the form and substance of any filings or pleading filed by the Debtors in connection with the Assumption Procedures will be reasonably acceptable to the Purchaser.

4. Upon the effective date of the assignment of any Supplemental Assigned Contract, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Supplemental Assigned Contract. To the extent provided in the APA, the Debtors shall cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

5. Each Supplemental Assigned Contract counterparty is deemed to have consented to the assumption and assignment of such Supplemental Assigned Contract, and the Purchaser shall be deemed to have demonstrated adequate assurance of future performance with respect to such Supplemental Assigned Contract pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

6. Upon the Seller's assignment of the Supplemental Assigned Contracts to the Purchaser under the provisions of this Order, the Canada Sale Order, and any additional orders of this Court, and the Debtors' payment of any Cure Costs pursuant to the terms hereof or the APA, no default shall exist under any Supplemental Assigned Contract, and no counterparty to any Supplemental Assigned Contract shall be permitted (a) to declare under such Supplemental Assigned Contract or (b) to otherwise take action against the Debtors or the Purchaser as a result of any Debtors' financial condition, bankruptcy, or failure to perform any of its obligations under

the relevant Supplemental Assigned Contract. Each non-debtor party to a Supplemental Assigned Contract hereby is also forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors or the Purchaser, or the property of any of them, any default or Claim arising out of any indemnity obligation or warranties for acts or occurrences arising prior to or existing as of the Closing Date, or, against the Purchaser, any counterclaim, defense, setoff, or any other Claim asserted or assertable against the Debtors and (ii) imposing or charging against the Purchaser or its affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Seller's assumption and assignment of the Supplemental Assigned Contracts to the Purchaser. Any provision in any Supplemental Assigned Contract that purports to declare a breach, default, or termination as a result of a change of control of the Acquired Assets is hereby deemed unenforceable under section 365(f) of the Bankruptcy Code. To the extent that any counterparty to a Supplemental Assigned Contract is notified of Cure Costs (or the absence thereof) and fails to object to such Cure Costs (or the absence thereof) with respect to a Supplemental Assigned Contract, such counterparty shall be deemed to have consented to such Cure Costs (or the absence thereof) and is deemed to have waived any right to assert or collect or enforce any Cure Costs that may arise or have arisen prior to or as of the Closing.

7. On the effective date of the assignment of any Supplemental Assigned Contract, the Purchaser shall be deemed to be substituted for the applicable Debtors as a party to the applicable Supplemental Assigned Contracts and the applicable Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Supplemental Assigned Contracts.

8. All counterparties to the Supplemental Assigned Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the Debtors or the Purchaser for any instruments, applications, consents, or other documents that may be required or requested by any public authority or other party or entity to effectuate the applicable transfers in connection with the Canada Sale.

9. Notwithstanding anything to the contrary in this Canada Sale Order or the APA, a contract shall not be an Supplemental Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such contract is rejected or terminated by the Debtors, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as a Supplemental Assigned Contract hereunder and is not continued or otherwise extended upon assumption.

10. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Order; (e) a request or authorization to 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) a 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 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 reject any executory contract or unexpired lease.

11. The Debtors and the Purchaser are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Canada Sale Motion and the Procedures Order.

12. To the extent this Order is inconsistent with any prior order or pleading filed in these chapter 11 cases related to the Canada Sale Motion, the terms of this Order shall govern.

# Exhibit 1

## Supplemental Assigned Contracts

| Assumption Counterparty | Description of Contract[1] | Cure Amount | Assignee |
|---|---|---|---|
| Harbour Centre Complex Limited | License to Occupy - dated 05 / 26 / 2005 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Agreement Renewal - dated 04 / 29 / 2008 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | License to Occupy - dated 12 / 29 / 2009 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Agreement Renewal - dated 06 / 24 / 2011 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Agreement Renewal - dated 04 / 19 / 2013 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Renewal - dated 04 / 19 / 2013 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Renewal - dated 02 / 17 / 2017 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | License to Occupy (Cyxtera C31) - dated 04 / 01 / 2019 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Letter Agreement re: License to Occupy Renewal - dated 09 / 13 / 2019 | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Emergency Power Request and Release Form – MMR6A | $0 | Cologix Canada, Inc. |
| Harbour Centre Complex Limited | Emergency Power Request and Release Form – MMR 6B | $0 | Cologix Canada, Inc. |
| Polaris Realty (Canada) Limited | Letter Agreement re: License to Occupy (C - 31) Renewal - dated 05 / 01 / 2023 | $0 | Cologix Canada, Inc. |

[1] The inclusion of a Supplemental Assigned Contract on this list does not constitute an admission as to the executory or non-executory nature of the Supplemental Assigned Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Supplemental Assigned Contract.