

**Fill in this information to identify the case:**

Debtor Cytera Communications, LLC

United States Bankruptcy Court for the: \_\_\_\_\_ District of New Jersey  
(State)

Case number 23-14852

Official Form 410  
**Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** Calpine Energy Solutions, LLC  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. <b>Where should notices and payments to the creditor be sent?</b>	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) Calpine Energy Solutions, LLC Locke Lord LLP, Attn: W. Steven Bryant 300 Colorado Street, Ste. 2100 Austin, Texas 78701, USA Contact phone <u>512-305-4726</u> Contact email <u>sbryant@lockelord.com</u>	Calpine Energy Solutions, LLC 24220 Network Place Chicago, Illinois 60673-1242, USA Contact phone <u>619-684-8286</u> Contact email <u>See summary page</u>

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:                    

7. How much is the claim? \$ 2,274,276.95. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Delivery of Electricity

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: Prepetition security deposit

**Basis for perfection:** Possession of deposit  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

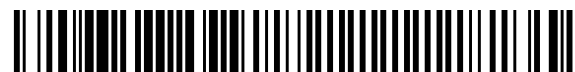
**Value of property:** \$ 4000000  
**Amount of the claim that is secured:** \$ 2274276.95  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ 2274276.95

**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input checked="" type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( <u>2</u> ) that applies.	\$ <u>1321844.22</u>

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ 1321844.22

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/10/2023  
MM / DD / YYYY

/s/Sean Fallmer  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Sean Fallmer  
First name Middle name Last name

Title President

Company Calpine Energy Solutions, LLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 401 West A Street, Suite 500, San Diego, California, 92101, USA

Contact phone 713-373-3498 Email cslegal@calpinesolutions.co



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877)-726-6510 | International 001-310-823-9000

<b>Debtor:</b> 23-14852 - Cyxtera Communications, LLC		
<b>District:</b> District of New Jersey, Newark Division		
<b>Creditor:</b> Calpine Energy Solutions, LLC Locke Lord LLP, Attn: W. Steven Bryant 300 Colorado Street, Ste. 2100  Austin, Texas, 78701 USA <b>Phone:</b> 512-305-4726 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> sbryant@lockelord.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>  <b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>  <b>Filing Party:</b> Creditor	
<b>Disbursement/Notice Parties:</b> Calpine Energy Solutions, LLC  24220 Network Place  Chicago, Illinois, 60673-1242 USA <b>Phone:</b> 619-684-8286 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> Ryan.Paros@calpinesolutions.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Delivery of Electricity	<b>Last 4 Digits:</b> Yes	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 2,274,276.95	<b>Includes Interest or Charges:</b> Yes	
<b>Has Priority Claim:</b> Yes	<b>Priority Under:</b> 11 U.S.C. §507(a)(2): 1321844.22	
<b>Has Secured Claim:</b> Yes: 2274276.95 <b>Amount of 503(b)(9):</b> Yes: 1321844.22 <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> Other Describe: Prepetition security deposit <b>Value of Property:</b> 4000000 <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b> 2274276.95 <b>Basis for Perfection:</b> Possession of deposit <b>Amount Unsecured:</b>	

**Submitted By:**

Sean Fallmer on 10-Aug-2023 5:24:27 p.m. Eastern Time

**Title:**

President

**Company:**

Calpine Energy Solutions, LLC

**Optional Signature Address:**

Sean Fallmer

401 West A Street, Suite 500

San Diego, California, 92101

USA

**Telephone Number:**

713-373-3498

**Email:**

cslegal@calpinesolutions.com

**Fill in this information to identify the case:**

Debtor 1 Cyxtera Communications, LLC  
 Debtor 2 \_\_\_\_\_  
 (Spouse, if filing)  
 United States Bankruptcy Court for the: \_\_\_\_\_ District of New Jersey  
 Case number 23-14852

Official Form 410

**Proof of Claim**

4/22

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1: Identify the Claim**

1. **Who is the current creditor?** Calpine Energy Solutions, LLC  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  Yes. From whom? \_\_\_\_\_

3. <b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>Locke Lord LLP, Attn: W. Steven Bryant</u> Name 300 Colorado Street, Ste. 2100 Number Street Austin Texas 78701 City State ZIP Code Contact phone <u>512-305-4726</u> Contact email <u>sbryant@lockelord.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----	<u>Calpine Energy Solutions, LLC</u> Name 24220 Network Place Number Street Chicago Illinois 60673-1242 City State ZIP Code Contact phone <u>(619) 684-8286</u> Contact email <u>Ryan.Paros@calpinesolutions.com</u>

4. **Does this claim amend one already filed?**  No  Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM/DD/YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case was Filed**

6. Do you have any number you use to identify the debtor?  No.  Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:\*\* \_\_\_\_\_  
 \*\*Debtor has multiple account numbers. See Proof of Claim Attachment

7. How much is the claim? \$ 2,274,276.95 + Unliquidated Amount\* Does this amount include interest or other charges?  
 No  Yes Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).  
 \*See Proof of Claim Attachment

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
**Delivery of Electricity \*** \*See Proof of Claim Attachment

9. Is all or part of the claim secured?  No  Yes.\* The claim is secured by a lien on property. \*See Proof of Claim Attachment.  
**Nature of property:**  
 Real estate.  
 Motor vehicle  
 Other. Describe: As of the Petition Date, CES held a \$4,000,000 prepetition security deposit  
**Basis for perfection:** \*See Proof of Claim Attachment  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ 4,000,000  
**Amount of the claim that is secured** \$ 2,274,276.95\*  
**Amount of the claim that is unsecured:** \$ N/A (the sum of the secured and unsecured amounts should match the amount in line 7.  
 \*See Proof of Claim Attachment  
**Amount necessary to cure any default as of the date of the petition:** \$ 2,274,276.95  
**Annual Interest Rate** (when case was filed) N/A %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  Yes. Identify the property: Debtor has no claims or offset rights against CES.

12.	<b>Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</b>  A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply.</i>  <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(2) that applies—Administrative claims under 503(b)(1)(A)	<b>Amount entitled to priority</b>  \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.			
13.	<b>Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?</b>	<input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.	\$ <u>1,321,844.22</u>

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it.

**FRBP 9011(b)**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.**

**18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am the guarantor, surety, endorser, or other co-debtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct

Executed on date 08 / 10 / 2023  
MM / DD / YYYY

  
Signature

Print the name of the person who is completing and signing this claim:

<b>Name</b>	<u>Sean</u>	<u>Fallmer</u>
	First Name	Last Name
<b>Title</b>	<u>President</u>	
<b>Company</b>	<u>Calpine Energy Solutions, LLC</u>	
	Identify the corporate servicer as the company if the authorized agent is a servicer.	
<b>Address</b>	<u>401 West A Street, Suite 500</u>	
	Number	Street
	<u>San Diego</u>	<u>California</u>
	City	State
		<u>92101</u>
		ZIP Code
<b>Contact Phone</b>	<u>(713) 373-3498</u>	Email <u>cslegal@calpinesolutions.com</u>



## **PROOF OF CLAIM ATTACHMENT**

**CALPINE ENERGY SOLUTIONS, LLC** (“**CES**”) asserts a claim (the “**Claim**”) against **Cyxtera Communications, LLC** (the “**Cyxtera**”) in the Chapter 11 bankruptcy case styled *In re Cyxtera Communications, LLC*, Case No. 23-14852 (the “**Cyxtera Bankruptcy Case**”). The Cyxtera Bankruptcy Case commenced on June 4, 2023 (the “**Petition Date**”) when Cyxtera and its affiliates (collectively, the “**Debtors**”) initiated voluntary cases under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”). These Chapter 11 cases, including the Cyxtera Bankruptcy Case, are jointly administered under the case styled *In re Cyxtera Technologies, Inc., et al.*, Case No. 23-14853 (JKS) (jointly administered) (collectively, the “**Bankruptcy Cases**”) in the Bankruptcy Court.

### **I. Background and Basis for CES’s Claim**

CES is a licensed, North American retail energy provider and a subsidiary of Calpine Corporation, one of the nation’s largest power-generation companies. On or about December 6, 2016, CES f/k/a Noble Americas Energy Solutions, LLC entered into that certain *Electricity Sales and Purchase Agreement*, dated December 6, 2016 (the “**Agreement**”) with Cyxtera, f/k/a Savvis Communications Corporation.<sup>1</sup> Under the Agreement, CES agreed to deliver electricity to Cyxtera in accordance with one or more *Addenda* (the “**Addenda**”) to be executed in the future. The Addenda would prescribe, among other things, the times, prices, and delivery points for the electricity Cyxtera was to receive. The Agreement did not obligate the parties to execute any specific Addenda.

As of the Petition Date, the following Addenda were active and in effect pursuant to the Agreement: (i) *Addendum*, dated effective July 27, 2022, for delivery at Delivery Point PSEG\_RESID\_AGG, beginning August 1, 2022 through December 31, 2026, (ii) *Addendum*, dated effective July 27, 2022, for delivery at Delivery Point ComEd\_RESID\_AGG, beginning August 1, 2022 through December 31, 2026, (iii) *Addendum*, dated effective October 26, 2022, for delivery at Delivery Point NEMASSBOST, beginning January 1, 2023 through June 30, 2023, (iv) *Addendum*, dated effective November 2, 2022, for delivery at Delivery Point AEPOHIO\_RESID\_AGG, beginning January 2023 through December 31, 2026, and (v) *Addendum*, dated effective February 22, 2023, for delivery at Delivery Point NEMASSBOST, beginning July 1, 2023 through December 31, 2024.<sup>2</sup> As warranted by the parties in the Agreement, CES and Cyxtera were “forward contract merchants”, and the Agreement and each separate Addenda constitute “forward contracts”—all as those terms are defined under the Bankruptcy Code and applicable law. (*See* Agreement, Arts. 9(a), 10); *see also* 11 U.S.C. §§ 362(b)(6), 556, & 561-562.

Before the Petition Date, Cyxtera provided CES with a security deposit totaling \$4,000,000 (the “**Pre-Petition Deposit**”) as security for the payment of any amounts owed under the Agreement and any Addenda as well as for the continued delivery of electricity pursuant to the terms and specifications set forth in the Addenda. CES had not offset any portion of the Pre-Petition Deposit as of the Petition Date.

On the Petition Date, Cyxtera owed CES \$2,274,276.95 for electricity delivered to Cyxtera before the Petition Date, as reflected in certain invoices (the “**Unpaid Invoices**”) issued to Cyxtera. Of this amount, a total of \$1,321,844.22 was owed for electricity received by Cyxtera during the twenty (20) days prior to the Petition Date (i.e., from May 15, 2023, through June 3, 2023).<sup>3</sup>

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<sup>1</sup> A copy of the Agreement is attached to this Proof of Claim as Exhibit “A”.

<sup>2</sup> Redacted copies of the Addenda, which contain confidential pricing and business terms, are available upon request to CES’s counsel.

<sup>3</sup> The Unpaid Invoices reflecting this amount are summarized in a spreadsheet attached to this Proof of Claim as Exhibit “B”. Because the Unpaid Invoices are voluminous, CES has not included copies of all the Unpaid Invoices with this Proof of Claim. These copies are available upon request to CES’s counsel.

## **II. Components of CES's Claim**

CES's Claim consists of the following: (i) the principal amount due, (ii) attorneys' fees and costs, and (iii) contingent and unliquidated damages related to the potential rejection, termination, and/or liquidation of the Agreement and the Addenda. These components of the Claim are as follows:

First, the total, pre-petition, principal amount owed to CES as of the Petition Date was \$2,274,276.95 (the "Principal Amount"). This Principal Amount represents the unpaid debt owed by Cyxtera to CES as of the Petition Date for electricity delivered before the Petition Date, and Cyxtera bears responsibility for this entire Principal Amount. Furthermore, of the Principal Amount, \$1,321,844.22 (the "Priority Amount") was owed for electricity received by Cyxtera in the ordinary course of business during the twenty-day period from May 15, 2023 through June 3, 2023. This Priority Amount constitutes an administrative claim pursuant to Bankruptcy Code § 503(b)(9). CES therefore asserts the Priority Amount as a § 503(b)(9) administrative claim against Cyxtera's bankruptcy estate, along with the remaining balance of the Principal Amount.

Second, CES also has a claim for pre- and post-petition attorneys' fees and costs (collectively, "Attorneys' Fees"). Article 11(l) of the Agreement defines "Costs" to include all reasonable attorneys' fees and expenses incurred by the non-defaulting party (i.e., CES) arising from the enforcement of CES's rights under the Agreement and/or the Addenda. (*See* Agreement, Art. 11(l)). CES may therefore recover, among other things, all its fees and costs incurred during the Bankruptcy Cases. As of the Petition Date, the Attorneys' Fees were unliquidated. Upon request, CES will provide further documentation of these Attorneys' Fees.

Third, as of the date of this Proof of Claim, Cyxtera has neither rejected nor assumed either the Agreement or any Addenda under Bankruptcy Code § 365, and, by the same token, CES has not terminated and liquidated either the Agreement or the Addenda pursuant to Bankruptcy Code §§ 362(b)(6), 556, and 561-562. As mentioned above, the Agreement and the Addenda constitute executory contracts under Bankruptcy Code § 365. If Cyxtera rejects the Agreement and/or any Addenda in the Bankruptcy Cases, then CES may assert additional rejection/liquidation/termination damages, pursuant to the Agreement's Default and Termination provisions. (*See* Agreement, Art. 7). Likewise, CES, in its capacity as a forward-contract merchant, may at any time terminate, liquidate, and/or offset the Agreement and/or any Addenda as forward contracts, in accordance with Bankruptcy Code §§ 362(b)(6), 556, and 561-562. Following such termination, liquidation, and offsetting, CES may assert a claim for termination and/or liquidation damages owed to CES, if any. Whether arising from the rejection, termination, and/or liquidation of the Agreement and/or any Addenda, all such amounts remain unliquidated and contingent as of the date of this Proof of Claim (collectively, the "Rejection Damages"). Accordingly, CES asserts an unliquidated and contingent claim for these Rejection Damages and reserves the right to amend this Proof of Claim to assert these Rejection Damages in a liquidated amount following the rejection and/or termination of the Agreement and/or any Addenda.

In conclusion, the total, liquidated amount of the Claim as of the Petition Date was \$2,274,276.95. This figure reflects only the Principal Amount owed to CES. It does not include any further claim for the Rejection Damages or Attorneys' Fees, which remain unliquidated and/or contingent at this time. Notwithstanding the unliquidated and/or contingent portions of the Claim, CES nevertheless asserts the entire Claim against Cyxtera in the Bankruptcy Cases (including the Principal Amount, the Attorneys' Fees, and the Rejection Damages).

## **III. Security Deposit**

As mentioned above, CES held as of the Petition Date a Pre-Petition Deposit totaling \$4,000,000 as security for the payment of any amounts owed under the Agreement and the Addenda and for the continued delivery of electricity pursuant to the terms and specifications in the Addenda. CES owns the Pre-Petition Deposit outright. CES therefore claims an undivided ownership right in the Pre-Petition Deposit and denies that Cyxtera

or its bankruptcy estate hold any rights whatsoever in the Pre-Petition Deposit. Notwithstanding the foregoing, to the extent that the Bankruptcy Court or any other court of competent jurisdiction determines that Cyxtera and/or any other Debtors hold an ownership interest or right of any kind in the Pre-Petition Deposit, then CES asserts a fully perfected, first-priority lien, security interest, and/or setoff right (the “Rights”) against the entire Pre-Petition Deposit in order to secure the Claim. Under Bankruptcy Code § 366(c)(4), CES may offset all or any portion of the Claim against the Pre-Petition Deposit following the Petition Date, notwithstanding any other provision of the Bankruptcy Code or applicable law. CES hereby reserves the right to effect such offset/setoff at any time after the Petition Date.

To the extent that Cyxtera or the other Debtors own any interest in the Pre-Petition Deposit, then CES’s Claim constitutes a secured claim up to the value of the Pre-Petition Deposit. Any portion of the Claim that is not a secured claim constitutes an unsecured claim.

#### **IV. Reservation of Rights**

CES’s investigation continues with respect to all matters described in this Proof of Claim. CES reserves the right to amend, modify, alter, supplement, replace, or withdraw this Proof of Claim and/or any attachments or exhibits at its discretion at any time. This Proof of Claim does not waive or release: (i) any claim, right, or interest of CES against any person or entity, including, without limitation, any indemnitors or guarantors, (ii) any lien, right, interest, or security interest in any property (including without limitation in any property of any person or entity other than CES), or (iii) any collateral of any kind for amounts owed to CES by Cyxtera or any other person or entity.

This Proof of Claim does not include any claim for post-petition electricity provided to Cyxtera following the Petition Date under the Agreement, any Addenda, and/or any other arrangement between the parties. Any amounts owed for the post-petition delivery of electricity to Cyxtera constitute post-petition administrative expenses of Cyxtera’s bankruptcy estate owed to CES. CES will assert a post-petition and/or administrative-expense claim in the Bankruptcy Cases for post-petition electricity delivered to Cyxtera in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

If you have any questions regarding this Proof of Claim, its contents, and/or the attachments to this Proof of Claim, please contact CES’s counsel at 512-305-4726.

**ELECTRICITY SALES AND PURCHASE AGREEMENT**  
Between NOBLE AMERICAS ENERGY SOLUTIONS LLC ("Seller")  
And SAVVIS COMMUNICATIONS CORPORATION ("Buyer")  
As of December 6, 2016 (the "Effective Date")

This Agreement is made by and between Seller and Buyer (referred to collectively as the "Parties" and individually as a "Party). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SCOPE OF THE AGREEMENT**

(a) Electricity Supply. Upon enrollment of Buyer's Facilities, and for the duration of a Transaction, Seller shall sell and deliver, or cause a third party (including Buyer's Local Utility) to deliver, and Buyer shall purchase and receive, 100% of Buyer's Electricity requirements for Buyer's Facilities at the Delivery Point(s) solely for use at Buyer's Facilities.

(b) Transactions. From time to time, the Parties may, but shall not be obligated to, enter into one or more Transactions. Transactions will ordinarily be entered into by the execution of an Addendum. The Parties may also enter into Transactions through the use of Electronic Communication and in those cases Buyer shall execute, promptly upon Seller's request, an Addendum confirming the terms of such Transaction. The Parties agree that an Addendum may take the form of a facsimile or an Imaged Document. Notwithstanding the foregoing, the failure of either Party to execute an Addendum shall not invalidate an otherwise valid Transaction. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction entered into in accordance with this Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties or based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

**ARTICLE 2. TERM OF AGREEMENT**

This Agreement shall be in effect as of the Effective Date and shall continue until terminated by either Party with thirty (30) days written notice to the other Party, or in accordance with the other provisions contained herein; provided, that this Agreement shall remain in effect with respect to the Transaction(s) entered into prior to such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s) or such Transaction(s) shall have each been terminated under Articles 6 or 7 of this Agreement, provided that all obligations of the Parties which must survive such termination in order to give full force and effect to the intent of the Parties as expressed herein shall so survive.

**ARTICLE 3. PRICING**

(a) Contract Price. The price that Buyer pays for Electricity shall be set forth in each Transaction. In the event that Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries (including, without limitation, for any deliveries made subsequent to termination of this Agreement), then the Contract Price shall be the Base Price.

(b) Taxes. As between the Parties, Seller shall be responsible for all Taxes incurred up to the Delivery Point and, Buyer shall be responsible for all Taxes incurred at and after the Delivery Point. Seller may recoup such Taxes as a separate line item on Seller's invoice to the extent allowed by Law. Seller will recognize a sales tax exemption of Buyer upon receipt of proper documentation.

**ARTICLE 4. SERVICE OBLIGATIONS**

(a) Enrollment. Buyer shall timely provide Seller with all information (including account information) and documentation required to appoint Seller as Buyer's Electricity service provider and to allow Seller to receive information from Buyer's Local Utility which Seller requires to perform its obligations hereunder. Seller shall enroll Buyer's Facilities

upon: (i) execution of a Transaction; (ii) receipt of an executed Enrollment Form (attached hereto as Appendix I) from Buyer and (iii) a designated active switch date from Buyer's Local Utility.

(b) Buyer shall reimburse Seller for all costs and losses incurred by Seller as a result of a delayed or unsuccessful enrollment or de-enrollment, provided, that any such delay or failure is not a direct result of Seller's negligence or willful misconduct.

(c) Operational Requirements. Buyer shall operate Buyer's Facilities such that Electricity consumption is consistent with Buyer's Baseline. Buyer shall notify Seller as soon as practicable of: (i) any revised monthly consumption forecast; (ii) all scheduled or unscheduled outages or anticipated changes in usage; (iii) changes in Buyer's Baseline; and (iv) any removal of a Buyer's Facility from service hereunder during the effective period of an Addendum or a Transaction. Buyer shall be responsible to Seller for any additional costs and losses incurred by Seller arising from (i), (ii), (iii) or (iv); provided that Seller shall use commercially reasonable efforts to mitigate any such costs after receipt of such notice. Buyer shall not participate in any curtailment or demand response programs without the prior written notice to Seller. Buyer shall be responsible for any costs incurred by Seller associated with Buyer's participation in such programs.

(d) Metering. Buyer or Buyer's Local Utility shall be responsible for the cost of installing meters and related equipment (including any telemetry and associated telephonic connections) at Buyer's Facilities that are required by Buyer's Local Utility for Seller to perform its obligations under this Agreement. Such meters shall measure all Electricity at Buyer's Facilities. Buyer shall provide Seller with reasonable access to Buyer's Facilities to install any additional metering equipment reasonably required by Seller. Seller shall be responsible for any costs associated with such additional metering equipment.

(e) Delivery and Title. As between the Parties, Seller will be in exclusive control, hold title to, and be responsible for any damage or injury caused by Electricity before the Delivery Point(s). Seller shall have no further obligation or responsibility relating to the Electricity at and after the Delivery Point(s). Buyer acknowledges that Seller does not own or control any of the transmission or distribution facilities used to deliver Electricity to the Delivery Points and that this function is solely the responsibility of the RTO and/or Buyer's Local Utility, and accordingly that Seller shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom.

**ARTICLE 5. BILLING, PAYMENT AND CREDIT**

(a) Invoices. Seller shall invoice Buyer each month in a manner consistent with Seller's billing cycle and at the address set forth on Appendix I. Seller shall calculate the amount(s) due based upon Buyer's actual usage information. Seller may reasonably estimate usage and charges at the time of invoicing; provided, that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

(b) Payment Terms. All invoices under this Agreement shall be immediately due and payable by Buyer to Seller, without Set-off, in accordance with Seller's invoice instructions on or before the fifteenth (15<sup>th</sup>) day following the date of invoice. All past due payments shall accrue interest at the Interest Rate calculated from the due date until the date payment is received in full by Seller.

(c) LDC Invoice. Where applicable, Buyer will receive a separate invoice from Buyer's Local Utility for the services it provides in

delivering Electricity to Buyer's Facilities. Buyer shall be solely responsible for payment of such invoice(s) and of any other charges billed by Buyer's Local Utility in connection herewith.

(d) Billing Disputes. If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer shall pay the resolved amount within two (2) Business Days of such resolution and shall include interest at the Interest Rate calculated as of the due date specified in the invoice. Buyer's right to dispute an invoice will be deemed waived if not made within one (1) year after the date of invoice.

(e) Credit. Upon any request from time to time by Seller, Buyer shall promptly provide to Seller such financial statements (if not publicly available) and other information as Seller may reasonably require to adequately assess Buyer's creditworthiness. If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement (including, without limitation on account of the occurrence of a material change in Buyer's creditworthiness or any Default), Seller may demand Adequate Assurances in an amount determined by Seller in a commercially reasonable manner, which Adequate Assurances shall be provided by Buyer within four (4) Business Days of such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of Set-off against such collateral.

#### **ARTICLE 6. FORCE MAJEURE**

Except for payment obligations for Electricity delivered prior to a Force Majeure event, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

#### **ARTICLE 7. DEFAULT AND TERMINATION**

(a) If a Default with respect to a Party shall have occurred and be continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7(c) as of such date ("Early Termination Date").

(b) The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Early Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity thereunder is not a fixed quantity, the Contract Quantity shall be the estimated baseline quantity set forth in the Addendum.

(c) The non-defaulting Party shall calculate a termination payment owed by the defaulting Party to the non-Defaulting Party by: netting out (i) all Settlement Amounts that would be due to the defaulting Party, plus, at the option of the non-defaulting Party, any cash or other form of security then available to the non-defaulting Party, plus any or all other amounts due to the defaulting Party under this Agreement against (ii) all Settlement Amounts that would be due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted to a single amount, which shall not be less than zero (the "Termination Payment"). The Termination Payment shall be due and payable by the defaulting Party to the non-defaulting Party within four (4) Business Days after receipt of a Termination Payment invoice.

(d) Notwithstanding any provision to the contrary, in the event that Seller is required under Law to continue to make deliveries to Buyer under this Agreement or any Transaction after the Early Termination Date ("Post-Termination Deliveries"), the Parties agree that such obligation shall in no event prohibit, limit or otherwise impair Seller's rights under this Article 7 (including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing).

#### **ARTICLE 8. INDEMNIFICATION AND LIMITATION OF LIABILITY**

(a) Seller agrees to indemnify, defend, and hold harmless Buyer, its Affiliates, and their respective directors, officers, agents, employees and customers (each a "Buyer Indemnitee") from any claims by a third party against a Buyer Indemnitee resulting from or alleged to have resulted from any act or omission of Seller under or related to this Agreement arising from any act or omission of Seller occurring prior to the Delivery Point. Buyer agrees to indemnify, defend, and hold harmless Seller, its Affiliates, and their respective directors, officers, agents, employees and customers (each a "Seller Indemnitee") from any claims by a third party against a Seller Indemnitee resulting from or alleged to have resulted from any act or omission of Buyer under or related to this Agreement arising from any act or omission of Buyer occurring from and after the Delivery Point.

(b) FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

#### **ARTICLE 9. REPRESENTATIONS AND WARRANTIES**

(a) Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any Law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with the delivery or receipt of Electricity under this Agreement; (vi) it will comply with all applicable Laws in the performance of the Agreement; and (vii) it is a "forward contract merchant" (within the meaning of such term as used

in the U.S. Bankruptcy Code) and each Party is acting in its capacity as a forward contract merchant in entering into this Agreement.

(b) Buyer represents to Seller that: (i) Seller is not acting as Buyer's advisor, expert, fiduciary, representative or consultant and has not provided, and nothing herein will be claimed by Buyer as the provision of, advice regarding the value or advisability of trading in commodities; (ii) Buyer shall be solely responsible for retaining adequate advisors and counsel to advise it with respect to the obligations assumed hereunder regardless of any information provided by Seller; (iii) it has knowledge and experience in business matters sufficient to enable it to evaluate the risks associated with this Agreement and this Agreement is entered into by Buyer at Buyer's sole election and in the exercise of its independent judgment without duress; (iv) it is not relying on any representations of Seller other than those expressly set forth herein; (v) Buyer owns or controls Buyer's Facilities or has control over the purchase and receipt of Electricity therefor; (vi) all of the information furnished by Buyer concerning Buyer's Facilities (including applicable load factors, Buyer's Local Utility rate classes and schedules, time of use, and service information) is, to the best of Buyer's information and belief, true and accurate when furnished to Seller; (vii) it is a producer, processor, commercial user of or merchant handling the commodity subject hereto and has entered into this Agreement and any Transactions solely for non-speculative purposes related to such business; (viii) it shall not resell any Electricity received from Seller to a third party; (ix) each of Buyer's Facilities can be enrolled on the Start Date specified for each Transaction; and (x) Buyer's total aggregate Electricity usage exceeds 800 MWhs annually.

(c) NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

The representations and warranties made in this Article 9 shall be deemed to be repeated upon the execution of any Transaction.

#### **ARTICLE 10. BANKRUPTCY CODE ACKNOWLEDGEMENTS**

The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor. The Parties further agree that all Electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code.

#### **ARTICLE 11. DEFINITIONS**

Capitalized terms used in this Agreement have the following meanings:

(a) "Addendum" means, in respect to a specific Transaction, a supplement to, or modification of, this Agreement signed, by both Parties setting forth the terms of such Transaction.

(b) "Adequate Assurances" means collateral in the form of cash, letters of credit, or other security acceptable to Seller.

(c) "Affiliates" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

(d) "Agreement" means this Electricity Sales and Purchase Agreement, including all appendices, Addenda, Electronic Communications, and schedules, which are incorporated herein by reference as part of this Agreement, and all Transactions and any credit support or similar agreement between the Parties in respect thereto.

(e) "Base Price" means an amount per MWh in \$US (unless otherwise provided for) equal to the sum of: (i) the charges for the settlement interval at the time of delivery of Electricity as determined by the RTO or Local Utility (if appropriate) controlling or overseeing the location(s) in which the Delivery Point(s) are located, (ii) all costs to deliver Electricity to the Delivery Point(s), and (iii) two dollars and fifty cents (\$2.50) per MWh.

(f) "Business Day" means any day except Saturday, Sunday, or Federal Bank Holidays.

(g) "Buyer's Baseline" means the information provided to Seller regarding Buyer's operations and Electricity usage, including the stipulated MWh usage set forth in each Transaction.

(h) "Buyer's Facilities" means the account(s) identified in Appendix II.

(i) "Buyer's Local Utility" means the electric distribution utility or utilities responsible for delivering electricity to Buyer's Facilities.

(j) "Contract Price" means the price per MWh in \$US (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Electricity as specified in a Transaction.

(k) "Contract Quantity" means the quantity of Electricity specified in a Transaction.

(l) "Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.

(m) "Default" means, with respect to a Party (the defaulting Party), the occurrence of any of the following; (i) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five (5) Business Days after written notice; (ii) any representation or warranty is false or misleading when made or repeated; (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within five (5) Business Days after written notice; (iv) the failure by Buyer to provide Adequate Assurances in accordance with Article 5(e); (v) such Party (or such Party's credit support provider) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar Laws for the protection of creditors, or has such a petition filed against it; (vi) such Party makes an assignment or any general arrangement for the benefit of creditors; (vii) such Party otherwise becomes bankrupt or insolvent (however evidenced); (viii) such Party becomes unable to pay its debts as they fall due; (ix) termination of a Transaction prior to its End Date unless otherwise expressly agreed to in the Agreement; or (x) any Default under any other agreement between the Parties.

(n) "Delivery Point(s)" means the physical point(s) specified in a Transaction at which Seller shall deliver, or cause to be delivered, Electricity to Buyer.

(o) "Electricity" means electric energy (expressed in MWh) and any related components thereto or products specified in a Transaction.

(p) "Electronic Communication" means communication conducted by electronic means whereby electronic records are created, including without limitation, electronic mail and instant messaging.

(q) "Force Majeure" means events or circumstances, beyond the reasonable control of a Party and not caused by the negligence of such Party, which prevent that Party from performing its obligations under this Agreement, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. Market fluctuations are not a Force Majeure Event. Force Majeure shall include, without limitation, a Force Majeure affecting an RTO or Buyer's Local Utility that in turn prevents a Party's performance of its obligations hereunder. A claim of Force Majeure may not be based on: (i) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (ii) Buyer's closure or material curtailment or discontinuation of operation of any of Buyer's Facilities due to economic circumstance or condition; or (iii) Seller's ability to sell Electricity at a price greater than the Contract Price.

(r) "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Transaction, determined in a commercially reasonable manner.

(s) "Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court, or other similar political subdivision or public entity or instrumentality of the United States or one or more states.

(t) "Imaged Document" means any document generated by the Parties which is scanned and stored in electronic form, including, by way of illustration and not limitation, portable document format or similar type (e.g. jpg, tiff, gif).

(u) "Interest Rate" means one percent (1%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates"; provided that, the Interest Rate may never exceed the maximum rate permitted by Law.

(v) "Law" means any law, constitution, charter, statute, ordinance, code, rule, regulation, tariff, protocols, decision, order, decree, judgment or other legislative or administrative action of any Governmental Entity, or any interpretation thereof by any court, agency or instrumentality having jurisdiction, as well as all rules, policies and procedures lawfully adopted by an RTO governing or controlling the area in which Buyer's Facilities are located.

(w) "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Transaction, determined in a commercially reasonable manner.

(x) "MWh" means a megawatt-hour of Electricity.

(y) "Off-Peak Hours" means hours not defined as On-Peak Hours.

(z) "On-Peak Hours" means hours determined to be "on peak" by Buyer's regional reliability council of the North American Electric Reliability Council, or any successor entity, governing the area in which Buyer's Facilities are located.

(aa) "RTO" means a power pool, independent system operator, transmission provider, or Buyer's Local Utility acting as the grid manager, or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.

(bb) "Settlement Amount" means, with respect to a Transaction, the Losses or Gains, and Costs, which the non-defaulting Party incurs as a result of the termination of such Transaction.

(cc) "Set-off" means offset, combination of accounts, netting, right of retention or withholding, or any similar right.

(dd) "Start Date" means the date specified in a Transaction; provided, that if a Transaction does not specify such a date, then the date upon which all of the conditions set forth under Article 4(a)(i)-(iii) are satisfied.

(ee) "Taxes" means all federal, state and local taxes, assessments, levies, duties, fees, charges or withholdings of any kind, including gross receipts taxes, utility and regulatory taxes, assessments and surcharges however denominated and all penalties, fines, additions to tax, or interest on unpaid taxes, but excluding any taxes on net income.

(ff) "Termination Payment" has the meaning set forth in Article 7(c).

(gg) "Transaction" means an agreement between the Parties for the purchase and sale of Electricity pursuant to this Agreement, which shall include, among other terms, the Electricity product, Contract Price, delivery term, Contract Quantity and Delivery Point(s).

(hh) "Voice Record" means a recorded telephone conversation between representatives of the Parties evidencing the terms of a Transaction.

## ARTICLE 12. MISCELLANEOUS

(a) When the singular number is used, it is deemed to include the plural and vice versa. The words "include" and "including" mean "including, without limitation" with respect to whatever follows.

(b) This Agreement and each Transaction is strictly confidential and shall not be disclosed by a Party (except to such Party's Affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Law. The Parties agree that damages would be an inadequate remedy for breach of this provision and that either Party shall be entitled to equitable relief in connection herewith, provided that any damages shall be limited to actual damages as provided herein.

(c) Unless otherwise specified herein, any notice required or permitted under this Agreement, must be in writing and addressed as provided in Appendix I. Notice by receipt confirmed facsimile, email or hand delivery shall be effective on the Business Day actually received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Either Party may change any address listed in Appendix I by providing written notice of same in accordance herewith.

(d) This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

(e) This Agreement (including any Transaction, or portion thereof) may not be assigned or transferred by a Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets (including, without limitation, all or a substantial portion of Seller's portfolio of retail supply contracts) of the transferring Party, whether by merger or acquisition, (ii) by either Party to any Affiliate; or (iii) by Seller in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof; provided, that in the case of items (i) and (ii), the assignee or transferee shall be at least as creditworthy as the assigning or transferring Party and such assignee or transferee shall agree in writing to be bound by the terms and conditions of this Agreement (including all outstanding Transactions).

(f) In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.

(g) No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be



considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

(h) This Agreement does not grant, create or otherwise provide any rights enforceable by any person or entity not a Party to this Agreement.

(i) This Agreement and all Transactions (including any Addenda) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of such Transaction. Upon full execution (or deemed acceptance) of an Addendum, such Addendum (absent manifest error) shall control in the event of any conflict with the terms of an Electronic Communication, or in the event of any conflict with the terms of this Agreement. In the absence of an Addendum, or Electronic Communication shall evidence the terms of the Transaction.

(j) Each Party hereby consents to the recording and storage of Voice Records and Electronic Communication and waives any objection to recording of Voice Records and use of Electronic Communication. An Electronic Communication record shall be deemed received upon arrival at the receiving Party's electronic mailbox or internet address.

(k) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS SECTION 12(k) SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON.

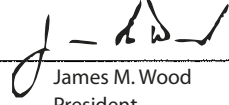
(l) Buyer covenants that if it is a Governmental Entity it shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Buyer further covenants that if it is a Governmental Entity it shall obtain all necessary budgetary approvals, appropriations, and funding for all of its obligations under this Agreement, the failure of which shall not be an excuse for Buyer's performance hereunder.

(m) Any provision declared or rendered unlawful, invalid, void or unenforceable by any applicable court of law or regulatory agency will not otherwise affect any other provision, agreement, covenant or remaining lawful obligations under this Agreement; provided, that in any such event, the Parties shall use good faith efforts to reform this Agreement in order to give effect to the original intention of the Parties.


(n) This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. The Parties agree that if a copy of this Agreement is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

(o) The Parties agree that if a copy of this Agreement, including any appendix and/or Addendum, is executed by a Party and transmitted to the other Party in the form of an Imaged Document, to which a Party has affixed its written or electronic signature, the copy received by the other Party shall be deemed for all legal purposes to be as valid and authentic as an original executed by the transmitting Party, and will be given the same legal effect as a written and signed paper original, and may be introduced as evidence in any proceeding as if such were original business records. Neither Party shall contest the admissibility of such Imaged Documents as evidence in any proceeding, and waive any objection they may have to the use of same.

For SELLER: NOBLE AMERICAS ENERGY SOLUTIONS  
LLC

By:   
James M. Wood  
Title: President

For BUYER:  
SAVVIS COMMUNICATIONS CORPORATION

By:   
Title: VP of operations



**APPENDIX I**

FORM OF NOTICE FOR THE ELECTRICITY SALE AND PURCHASE AGREEMENT  
 BETWEEN NOBLE AMERICAS ENERGY SOLUTIONS LLC ("SELLER")  
 AND SAVVIS COMMUNICATIONS CORPORATION ("BUYER")  
 AS OF December 6, 2016 ("EFFECTIVE DATE")  
 Date of Last Revision

1)

<b>SELLER</b>	<b>BUYER</b>
<b>ALL FORMAL NOTICES:</b>	<b>ALL FORMAL NOTICES:</b>
Noble Americas Energy Solutions LLC Attention: Legal Department 401 West A Street, Suite 500 San Diego, CA 92101 Telephone: (619) 684 8251 Facsimile: (619) 684 8350 Email: <a href="mailto:NESContracts@NobleSolutions.com">NESContracts@NobleSolutions.com</a>	<b>SAVVIS Communications Corporation</b> Attention: Galen MacKenzie 931 14st Denver, CO 80202 Telephone: 720-758-4315 Facsimile: Email: <a href="mailto:galen.mackenzie@centurylink.com">galen.mackenzie@centurylink.com</a>
<b>SALES REPRESENTATIVE:</b>	<b>BUYER'S REPRESENTATIVE:</b>
<b>Vicki A. Moore</b> Noble Americas Energy Solutions LLC 717 Texas Avenue, Suite 1000 Houston, TX 77002 Telephone: 214-952-2431 Facsimile: Email: <a href="mailto:vicki.moore@calpinesolutions.com">vicki.moore@calpinesolutions.com</a>	<b>Galen MacKenzie</b> <b>SAVVIS Communications Corporation</b> 931 14st Denver, CO 80202 Telephone: 720-578-4315 Facsimile: Email: <a href="mailto:galen.mackenzie@centurylink.com">galen.mackenzie@centurylink.com</a>
<b>SCHEDULING:</b>	<b>AUTHORIZED THIRD-PARTY RECIPIENT FOR NOTICES:</b>
E-Mail by Region:  ERCOT: <a href="mailto:NESERCOTDesk@NobleSolutions.com">NESERCOTDesk@NobleSolutions.com</a> EAST: <a href="mailto:NESEastDesk@NobleSolutions.com">NESEastDesk@NobleSolutions.com</a> MIDWEST: <a href="mailto:NESMidwestDesk@NobleSolutions.com">NESMidwestDesk@NobleSolutions.com</a>  NORTHEAST: <a href="mailto:NESNEDesk@NobleSolutions.com">NESNEDesk@NobleSolutions.com</a>  WEST: <a href="mailto:NESWestDesk@NobleSolutions.com">NESWestDesk@NobleSolutions.com</a>	<b>CASS</b>  Attention: Angie Thum  Telephone: 614-839-4473  Facsimile: - Email: <a href="mailto:-athum@cassinfo.com">-athum@cassinfo.com</a>
<b>REMITTANCE BY CHECK (send to nearest location) :</b>	<b>INVOICES:</b>
Noble Americas Energy Solutions LLC Operating/Lockbox Account 771045440  #24220 Network Place Chicago, IL 60673-242  P.O. Box #730964 Dallas, TX 75373-0964  P.O. Box #100967 Pasadena, CA 91189-0967	<b>CASS</b>  Attention: Accounts Payable PO Box 182575  Columbus, OH 43218  Telephone: Facsimile: Billing Method: Individual Copies To: <b>If Applicable</b>
<b>REMITTANCE BY WIRE TRANSFER:</b>	
JP Morgan Chase Bank New York, New York Bank ABA: 021000021 Account Number: 771045440	Federal Tax Identification No.:  Duns Number:

Rev. 05.16.08

Sempra Energy Solutions LLC is not the same company as the utility, SDG&E or SoCal Gas, and the California Public Utilities Commission does not regulate the term's of Sempra Energy Solutions LLC's products and services.

**Proof of Claim  
Exhibit B**

<b>CUSTOMER NAME</b>	<b>ACCOUNT NUMBER</b>	<b>STATE</b>	<b>SERVICE TYPE</b>	<b>INVOICE DATE</b>	<b>INVOICE NUMBER</b>	<b>INVOICE DUE DATE</b>	<b>TOTAL CURRENT CHARGES</b>
Cyxtera Communications, LLC	537595	OH	Electric	6/6/2023	231570018123033	6/21/2023	\$57,881.60
Cyxtera Communications, LLC	537595	OH	Electric	7/20/2023	232010018332965	8/4/2023	\$9,739.44
Cyxtera Communications, LLC	587579	MA	Electric	7/10/2023	231520018107720	7/25/2023	\$0.00
Cyxtera Communications, LLC	587579	MA	Electric	7/10/2023	231910018271624	7/25/2023	\$128.85
Cyxtera Communications, LLC	587581	MA	Electric	7/10/2023	231520018107721	7/25/2023	\$0.00
Cyxtera Communications, LLC	587581	MA	Electric	7/10/2023	231910018271630	7/25/2023	\$195,684.18
Cyxtera Communications, LLC	587582	MA	Electric	7/10/2023	231520018107722	7/25/2023	\$0.00
Cyxtera Communications, LLC	587582	MA	Electric	7/10/2023	231910018272022	7/25/2023	\$293,191.20
Cyxtera Communications, LLC	678977	IL	Electric	7/10/2023	231510018102685	7/25/2023	\$0.00
Cyxtera Communications, LLC	678977	IL	Electric	7/10/2023	231910018272023	7/25/2023	\$18.18
Cyxtera Communications, LLC	678978	IL	Electric	5/31/2023	231510018102686	6/15/2023	\$178,308.37
Cyxtera Communications, LLC	678978	IL	Electric	7/7/2023	231880018269595	7/24/2023	\$67,795.12
Cyxtera Communications, LLC	678979	IL	Electric	5/31/2023	231510018102687	6/15/2023	\$414,725.50
Cyxtera Communications, LLC	678979	IL	Electric	7/7/2023	231880018269597	7/24/2023	\$168,392.03
Cyxtera Communications, LLC	713532	IL	Electric	5/31/2023	231510018102688	6/15/2023	\$38,587.09
Cyxtera Communications, LLC	713532	IL	Electric	7/7/2023	231880018269598	7/24/2023	\$14,680.17
Cyxtera Communications, LLC	740603	NJ	Electric	6/5/2023	231560018122088	6/20/2023	\$264,832.74
Cyxtera Communications, LLC	740603	NJ	Electric	7/7/2023	231880018271268	7/24/2023	\$102,279.03
Cyxtera Communications, LLC	740604	NJ	Electric	6/5/2023	231560018122089	6/20/2023	\$13,811.48
Cyxtera Communications, LLC	740604	NJ	Electric	7/7/2023	231880018271269	7/24/2023	\$5,225.31
Cyxtera Communications, LLC	740605	NJ	Electric	6/5/2023	231560018122090	6/20/2023	\$294,338.21
Cyxtera Communications, LLC	740605	NJ	Electric	7/7/2023	231880018271270	7/24/2023	\$113,196.14
Cyxtera Communications, LLC	740606	NJ	Electric	6/5/2023	231560018122091	6/20/2023	\$24,181.40
Cyxtera Communications, LLC	740606	NJ	Electric	7/7/2023	231880018271271	7/24/2023	\$8,419.15
Cyxtera Communications, LLC	740607	NJ	Electric	6/5/2023	231560018122092	6/20/2023	\$5,699.89
Cyxtera Communications, LLC	740607	NJ	Electric	7/7/2023	231880018271272	7/24/2023	\$2,685.74
Cyxtera Communications, LLC	740608	NJ	Electric	6/5/2023	231560018122093	6/20/2023	\$349.68
Cyxtera Communications, LLC	740608	NJ	Electric	7/7/2023	231880018271273	7/24/2023	\$126.45
							<b>\$2,274,276.95</b>