

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C. (*pro hac vice pending*)
Christopher Marcus, P.C. (*pro hac vice pending*)
Derek I. Hunter (*pro hac vice pending*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
edward.sassower@kirkland.com
christopher.marcus@kirkland.com
derek.hunter@kirkland.com

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

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

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,
Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.



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

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion (the "Motion"): ²

Relief Requested

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and "Final Order"), (a) authorizing, but not directing, the Debtors to (i) continue performing under existing Hedging Contracts (as defined below), including paying any prepetition amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, (ii) enter into, and perform under, new Hedging Contracts, including paying any amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, (iii) grant superpriority claims and provide Credit Support (as defined below), as may be necessary; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing

² A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration.

twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

Background

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to

third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera's full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

The Debtors' Hedging Agreements

7. In the ordinary course of business, the Debtors operate data centers that offer colocation and interconnectivity services, among other things, which require significant amounts of electricity and power. The Debtors' revenue is therefore exposed to the prevailing market price of electricity which has experienced significant volatility over recent years. To minimize the risk to their business operations caused by such volatility and to secure a fixed contract price, the Debtors, like many of their peers, have historically entered into financial hedging contracts with various counterparties (the "Hedging Contract Counterparties") in the form of forward contracts (collectively, and together with all similar transactions and the agreements under which such transactions are documented, the "Hedging Contracts"). Hedging Contracts protect against

increases in electricity rates that could otherwise threaten the stability of the Debtors' cash flows. By removing a portion of the price volatility associated with future electricity consumption via such hedging arrangements, the Debtors are able to mitigate the potential effects of variability in net cash from operating activities due to fluctuations in electricity prices.

8. In a forward contract, two parties, a buyer and a seller, agree to exchange an asset at a specified price on a specified date in the future. On that specified future date, the seller is obligated to provide the asset to the buyer and the buyer is obligated to purchase the asset at the specified price regardless of the current market prices. By locking in a price, the parties are able to stabilize any risk associated with unpredictable price fluctuations.

9. Hedging Contracts typically comprise various documents memorializing the terms and conditions governing the transactions. These include (i) master agreements, (ii) confirmations issued under general terms and conditions or (iii) single transaction agreements (collectively, the "Transaction Agreements"). The Transaction Agreements set forth the terms and conditions that govern the transactions entered into between the parties from time to time.

10. Where a master agreement is used, a number of widely used standard forms exist for the types of transactions entered into by the Debtors and counterparties, and the parties enter into individual transactions under the master agreements. These individual transactions are customarily documented in the form of confirmations, which set forth, among other terms, certain economic terms and conditions including, for example, the specified quantities and delivery dates or calculation and timing of payment amounts.

11. Furthermore, Hedging Contracts typically include provisions for credit support and obligations to post collateral or performance assurance. Posting of collateral or any type of performance assurance requires the Debtors to periodically deposit money with their

counterparties based on either maximum monthly electricity bill amounts or average monthly electricity bill amounts. A re-evaluation of the credit support requirement generally occurs periodically throughout the term of each Hedging Contract. Re-evaluation often results in one party having either to provide additional collateral or return some of the existing collateral.

12. The types of Hedging Contracts entered into by the Debtors fall under a safe harbor from the automatic stay provided in section 362(b) of the Bankruptcy Code. As a result, any prepetition Hedging Contract could be, and most likely would be, terminated by the counterparty upon the Debtors' chapter 11 filing absent an agreement between the Debtors and such counterparty that would provide the counterparty with protections that are the same or similar to those that the counterparty would expect to receive in respect of transactions entered into with the Debtors during the pendency of these chapter 11 cases. It is therefore critical that the Debtors are granted authority to perform under, and grant superpriority claims to counterparties in respect of, their prepetition Hedging Contracts.

The Debtors' Use of Hedging Contracts

13. The Debtors enter into Hedging Contracts in the ordinary course of business to hedge the various risks associated with fluctuations in electricity prices. The Debtors do not enter into Hedging Contracts for speculative purposes.

14. The Debtors historically have entered into forward contracts to lock in the price of electricity over the life of the Hedging Contract, which helps to minimize the effect of market extremes. As of the Petition Date, the Debtors are party to fourteen forward Hedging Contracts with four Hedging Contract Counterparties—all of whom are utility providers.³ The forward

³ The Hedging Contract Counterparties are utility providers, including, among others: Calpine, Direct Energy, Constellation, and Shell.

Hedging Contracts are settled on a monthly basis. As of the Petition Date, the Debtors were party to approximately \$56 million in notional amount of forward Hedging Contracts with a mark-to-market liability of approximately \$0.5 million, which reflects the difference between the original purchase price of the Hedging Contracts and the market prices at any current point in time.

15. The Debtors seek authority, but not direction, to continue to honor any prepetition and postpetition obligations arising under the forward Hedging Contracts, adjust, modify, terminate, and otherwise engage in transactions thereunder, and enter into new Hedging Contracts, in the ordinary course of business and consistent with prepetition practices.

Credit Support in Connection with Hedging Contracts

16. Hedging Contracts often require that one or both parties secure their obligations by providing collateral to the other party (the “Credit Support”). The vast majority of the Debtors’ obligations under their Hedging Contracts are unsecured. However, as of the Petition Date, the Debtors have posted approximately \$4.9 million in respect of collateral calls made by two of the Debtors’ Hedging Contract Counterparties. The Debtors may be required to provide Credit Support in connection with the Hedging Contracts during the pendency of these chapter 11 cases. Therefore, the Debtors seek authority, but not direction, to provide Credit Support, as necessary, in the ordinary course of business on a postpetition basis.

Treatment of Hedge Contracts Under the Bankruptcy Code

17. Recognizing the unique status of electricity forwards in the financial markets, the Bankruptcy Code applies certain so-called “safe harbor provisions” to Hedging Contracts, allowing the non-debtor counterparty to exercise certain rights and remedies that are not otherwise available to a debtor’s contractual counterparties in a bankruptcy case.

18. *First*, a qualified non-debtor counterparty to a Hedging Contract may terminate and liquidate the Hedging Contract and apply collateral held under the Hedging Contract following commencement of a bankruptcy case to the extent provided for under the Hedging Contract, notwithstanding section 365(e)(1) of the Bankruptcy Code or the automatic stay under section 362 of the Bankruptcy Code. *See* 11 U.S.C. §§ 362(b)(6) & (17), 556, and 560. *Second*, absent any actual intent to defraud, a trustee or debtor in possession cannot avoid any prepetition payments made under a hedging Contract by a debtor to a qualified non-debtor counterparty. *See id.* §§ 546(e) and 546(g). *Third*, to the extent a hedging Contract provides for such action, and it is available under applicable non-bankruptcy law, a qualified non-debtor counterparty is entitled to set off mutual debts and claims against a debtor under a Hedging Contract without needing to seek relief from the automatic stay. *See id.* §§ 362(b)(6) & (17), and 560.⁴

19. The Debtors believe that, notwithstanding the potential rights of the Hedging Contract Counterparties under the “safe harbor provisions,” the Hedging Contract Counterparties may nevertheless be willing to maintain their prepetition Hedging Contracts and enter into new postpetition Hedging Contracts with the Debtors during these chapter 11 cases, but only if such parties have assurance that the Debtors have the authority to enter into and continue to perform under the Hedging Contracts.

20. The Debtors believe, in a prudent exercise of their business judgment, that continuing to perform under existing Hedging Contracts, entering into and performing under new Hedging Contracts, and providing Credit Support as may be necessary is in the best interests of

⁴ By filing this Motion, the Debtors are not expressing a view as to whether any particular contract falls within the scope of these provisions of the Bankruptcy Code. The Debtors expressly reserve all rights and defenses.

their estates. Immediate resumption of a hedging program consistent with prepetition practices would restore vital protection against price fluctuations for the benefit of all stakeholders.

Basis for Relief Requested

I. Section 363(c) of the Bankruptcy Code Authorizes the Debtors to Continue and Enter Into Hedging Contracts.

21. Section 363(c) of the Bankruptcy Code provides, in relevant part, that a debtor in possession “may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The ordinary course of business standard embodied in this provision is intended to allow a debtor in possession the flexibility to run its business during its chapter 11 proceedings. *Moore v. Brewer (In re HMH Motor Servs., Inc.)*, 259 B.R. 440, 448–49 (Bankr. S.D. Ga. 2000). Furthermore, section 105(a) of the Bankruptcy Code gives the Court broad discretion to issue orders necessary to “carry out the provisions of this title.” 11 U.S.C. § 105(a). Although the Debtors believe that entering into or otherwise modifying Hedging Contracts postpetition is within the ordinary course of their business, the Debtors submit that the Interim Order and Final Order confirming the Debtors’ authority is essential to provide comfort to counterparties that the Debtors have authority to enter into and perform under Hedging Contracts.

22. The Bankruptcy Code does not define “ordinary course of business.” *In re Commercial Mortg. & Fin. Co.*, 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). Courts have, however, clarified that the standard is meant “to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” *Med. Malpractice Ins. Assoc. v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir.

1997) (quoting *In re Watford*, 159 B.R. 597, 599 (M.D. Ga. 1993)); *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (stating that section 363 of the Bankruptcy Code is designed to allow a debtor in possession “flexibility to engage in ordinary transactions without unnecessary . . . oversight”). The two tests ordinarily applied by the courts to determine the ordinary course of business are the “horizontal” test and the “vertical” test. *Denton Cnty. Elec. Co-Op., Inc. v. Eldorado Ranch (In re Denton Cnty. Elec. Coop., Inc.)*, 281 B.R. 876, 882 & n.12 (Bankr. N.D. Tex. 2002); *In re Springfield Contracting Corp.*, 154 B.R. 214, 225–26 (Bankr. E.D. Va. 1993). “The ‘horizontal test’ focuses on the way businesses operate within a given industry. The ‘vertical test’ focuses on the expectations of creditors.” *Id.*

23. Maintaining Hedging Contracts and entering into new Hedging Contracts, in each case, satisfies both tests. Under the horizontal test, Hedging Contracts are typical and common arrangements among companies in the Debtors’ industry. Companies in the collocation and interconnectivity industry regularly enter into these transactions. Accordingly, the Debtors believe maintaining existing Hedging Contracts, as well as entering into, and performing under, new Hedging Contracts fall within the standard, ordinary course conduct of companies in the Debtors’ industry.

24. Under the vertical test, creditors’ reasonable expectations of a debtor’s “ordinary course of business” are based on the debtor’s specific prepetition business practices and norms, and the expectation that the debtor will conform to those practices and norms while operating as a debtor in possession. *In re Garofalo’s Finer Foods, Inc.*, 185 B.R. 414, 425 (ND. Ill. 1995). Thus, a fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Commercial Credit (In re Nat’l Lumber & Supply, Inc)*, 184 B.R. 74, 79 (9th Cir. B.A.P. 1995); *James A. Phillips*, 29 B.R. at 394. The size,

nature and type of business, and the size and nature of the transactions, in question, are all relevant in determining whether the transactions at issue are ordinary. *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 598 (M.D. Tenn. 1990); *Johns-Manville Corp.*, 60 B.R. at 617. “Accordingly, a postpetition transaction undertaken by the debtor that is similar in size and nature to prepetition transactions undertaken by the debtor would be within the ordinary course of business.” *Garofalo’s*, 186 B.R. at 426.

25. In the ordinary course of business, the Debtors enter into, perform under, adjust, modify, settle, and terminate Hedging Contracts. Accordingly, the Debtors believe that entering into Hedging Contracts is consistent with their ordinary course business practices.

26. Moreover, courts in this circuit and others have authorized debtors in various industries, including the Debtors’ industry, to continue or initiate hedging arrangements in the ordinary course of business, pursuant to section 363(c)(1). *See, e.g., In re Extraction Oil & Gas, Inc.* No. 10-11548 (CSS) (Bankr. D. Del. Jul. 13, 2020) (granting authority to continue performing under prepetition hedging agreements and authority to enter into and perform under postpetition hedging agreement and granting superpriority administrative-expense claim status to postpetition hedging obligations); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Feb. 26, 2018) (same); *In re Samson Resources Corporation*, No. 15-11934 (CSS) (Bankr. D. Del. Jan. 27, 2017) (same); *In re Oasis Petroleum North America LLC* No. 20-34771 (MI) (Bankr. S.D. Tex. Sep 30, 2020) (same).⁵

27. To the extent that continuation and entry into Hedging Contracts implicate section 363(b) of the Bankruptcy Code, the Debtors submit that continuing performance under and

⁵ Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

entering into Hedging Contracts would constitute a proper exercise of the Debtors' business judgment. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that debtors "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." Under section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose justifies such actions." *In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) ("This Court follows the 'sound business purpose' test when examining § 363(b) sales.") (Citing *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted). Courts in this and other circuits are loath to interfere with corporate decisions "unless it is shown that the bankrupt's decision was one taken in bad faith or in gross abuse of the bankrupt's retained business discretion." *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985) (applying the business judgment rule to a debtor's decision to reject an executory contract); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

28. There is no question that a sound business purpose exists for the Debtors to continue to perform under prepetition Hedging Contracts and enter into new Hedging Contracts, which would reduce the volatility on the Debtors' cash flow, help the Debtors limit working capital requirements, and, consequently, enhance the value of the Debtors' estates for the benefit of all their stakeholders.

29. Accordingly, the Debtors submit that authority to maintain existing Hedging Contracts and enter into Hedging Contracts is appropriate and in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases and should be permitted.

II. The Debtors Should Be Authorized to Provide Credit Support and Grant Superpriority Claims Pursuant to Section 364 of the Bankruptcy Code.

30. Because the transactions under Hedging Contracts are subject to value fluctuations in the ordinary course of business, Hedging Contract Counterparties may, in certain circumstances, require that the Debtors' obligations under Hedging Contracts be secured by various forms of Credit Support, including the granting of superiority claims and/or the granting of liens on certain unencumbered collateral pursuant to sections 364(c)(1) and (2) of the Bankruptcy Code in support of the Debtors' obligations to Hedging Contract Counterparties.

31. Section 364 of the Bankruptcy Code authorizes a debtor to obtain "credit" on a superpriority or senior secured basis when obtaining such credit on other terms is unavailable. 11 U.S.C. §§ 364(c) and (d). Courts generally afford debtors considerable deference to determine, in their business judgment, the terms under which they obtain postpetition secured credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981).

32. The Debtors therefore request authority, but not direction, to grant superiority claims and provide all other necessary Credit Support with respect to (a) those prepetition Hedging Contracts that are not terminated by the applicable Hedging Contract Counterparty and that the Debtors elect, in their business judgment, to maintain in full force and effect, and (b) postpetition Hedging Contracts into which they enter, as applicable, and determine, in their business judgment, are necessary. It is general market practice for parties to Hedging Contracts to be required to

provide Credit Support in the ordinary course of business to assure their performance when they are out-of-the-money. Given the Debtors' financial condition, Hedging Contract Counterparties may not be willing to continue existing, or otherwise enter into new, Hedging Contracts with the Debtors unless those contracts provide for the granting of superiority claims and/or the posting of Credit Support in the form of cash or other collateral to secure the Debtors' obligations under the Hedging Contract.

33. The relief sought herein represents a fair and efficient mechanism for enhancing the value of the Debtors' estates, while providing counterparties with appropriate inducement to not terminate existing, and enter into additional, Hedging Contracts with the Debtors. The Debtors therefore request authority to grant superiority claims and provide Credit Support (a) where necessary to secure their obligations under prepetition Hedging Contracts that are not terminated by the applicable Hedging Contract Counterparty and that the Debtors elect, in their business judgment, to maintain in force, and (b) postpetition Hedging Contracts, as applicable; *provided*, however, that any such claims shall be subject and junior to any claims, including adequate protection claims, cash collateral and/or claims for postpetition financing, granted in connection with approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements; *provided further*, however, that any such claims shall be subordinate to the Superpriority Claims⁶. Courts in this circuit and others routinely have granted similar relief. *See e.g., In re Extraction Oil & Gas, Inc.* No. 10-11548 (CSS) (Bankr. D. Del. Jul. 13, 2020) (authorizing debtors to pledge collateral in the form of liens and superpriority claims to

⁶ As defined in the *Debtors' Motion Seeking Entry of an Order (I) Authorizing Certain Debtors to Continue Selling, Contributing, and Servicing Receivables and Related Rights Pursuant to the Receivables Program, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the "Securitization Order"), filed contemporaneously herewith.

hedge counterparties); *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Feb. 26, 2018) (same); *In re Samson Resources Corporation*, No. 15-11934 (CSS) (Bankr. D. Del. Jan. 27, 2017) (same); *In re Oasis Petroleum North America LLC* No. 20-34771 (MI) (Bankr. S.D. Tex. Sep 30, 2020) (same).

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

34. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders and it is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

Request of Waiver of Stay

35. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested

in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

Waiver of Memorandum of Law

36. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

Reservation of Rights

37. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estate; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or

otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

No Prior Request

38. No prior request for the relief sought in this Motion has been made to this Court or any other court.

Notice

39. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the Hedging Contract Counterparties; (j) Mayer Brown LLP as counsel to PNC Bank, N.A.; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 4, 2023

/s/ Michael D. Sirota

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

Email: msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C. (*pro hac vice* pending)

Christopher Marcus, P.C. (*pro hac vice* pending)

Derek I. Hunter (*pro hac vice* pending)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: edward.sassower@kirkland.com

christopher.marcus@kirkland.com

derek.hunter@kirkland.com

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

EXHIBIT A

Proposed Interim Order

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

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

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C. (*pro hac vice pending*)

Christopher Marcus, P.C. (*pro hac vice pending*)

Derek I. Hunter (*pro hac vice pending*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

edward.sassower@kirkland.com

christopher.marcus@kirkland.com

derek.hunter@kirkland.com

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

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

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

(Page | 3)

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

Case No. 23-14853 (JKS)

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

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief* (the "Motion")¹ of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for entry of an interim order (this "Interim Order"), (a) authorizing, but not directing, the Debtors to (i) continue to perform under existing prepetition Hedging Contracts, including paying any prepetition amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, (ii) enter into and perform under new Hedging Contracts, including paying any amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, and (iii) grant superpriority claims and provide other Credit Support as may be necessary (on a final basis only); (b) granting related relief; and (c) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this

¹ Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

(Page | 4)

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

Case No. 23-14853 (JKS)

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

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.

2. The Final Hearing on the Motion will be held on _____, **2023** at _____ **(Eastern Time)**. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by the Debtors' proposed counsel on or before _____, **2023** at **4:00 p.m. (Eastern Time)**. If no objections are filed to the Motion, the Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.

3. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized, but not directed, to (a) continue to perform under existing Hedging Contracts, including paying any prepetition amounts owed thereunder, as necessary in the ordinary course of business, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder, and (b) subject to entry of the Final Order, enter into, guarantee, and perform under new Hedging Contracts, all without further order of the Court; *provided, however* that the Debtors shall consult with the Ad Hoc First Lien Group prior to entering into new Hedging Contracts.

(Page | 5)

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

Case No. 23-14853 (JKS)

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

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

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

6. Nothing in the Motion or this Interim Order waives or modifies the requirements of the RSA, including without limitation, the consent and consultation rights contained therein.

7. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Interim Order or the Motion or any order granting the relief requested by the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any

(Page | 6)

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

Case No. 23-14853 (JKS)

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

other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors'

(Page | 7)

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

Case No. 23-14853 (JKS)

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

designation of any particular check or electronic payment request as approved by this Interim Order.

10. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* filed substantially contemporaneously herewith (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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

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

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

(Page | 8)

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

Case No. 23-14853 (JKS)

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

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

16. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Order.

17. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

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

Exhibit B

Proposed Final Order

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

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

**KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP**

Edward O. Sassower, P.C. (*pro hac vice pending*)

Christopher Marcus, P.C. (*pro hac vice pending*)

Derek I. Hunter (*pro hac vice pending*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

edward.sassower@kirkland.com

christopher.marcus@kirkland.com

derek.hunter@kirkland.com

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Joint Administration Requested)

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.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

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

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

(Page | 3)

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

Case No. 23-14853 (JKS)

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

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief* (the "Motion")¹ of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for entry of a final order (this "Final Order"), (a) authorizing, but not directing, the Debtors to (i) continue to perform under existing prepetition Hedging Contracts, including paying any prepetition amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, (ii) enter into and perform under new Hedging Contracts, including paying any amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, and (iii) grant superpriority claims and provide other Credit Support as may be necessary; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion

¹ Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

(Page | 4)

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

Case No. 23-14853 (JKS)

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

is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized, but not directed, to (a) continue to perform under existing prepetition Hedging Contracts that remain in force and the terms of which are amended to the satisfaction of the Debtor party thereto, including paying any prepetition amounts owed thereunder, and modifying the terms thereof, all in the ordinary course of business and (b) enter into new postpetition Hedging Contracts and honor obligations thereunder, all without further order of the Court; *provided, however* that the Debtors shall consult with the Ad Hoc First Lien Group prior to entering into new Hedging Contracts.
3. Pursuant to section 364(c) of the Bankruptcy Code, the Debtors are authorized, but not directed, to grant superpriority claims and provide other Credit Support under (a) existing prepetition Hedging Contracts that remain in force and the terms of which are amended to the satisfaction of the Debtor party thereto and (b) postpetition Hedging Contracts, without further

(Page | 5)

Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

order of the Court; *provided*, however, that any such claims shall be subject and junior to any claims, including adequate protection claims, cash collateral and/or claims for postpetition financing, granted in connection with any interim or final order approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements (each such order, a "DIP Order"); *provided further*, however, that any superpriority claim granted with respect to postpetition Hedging Agreements shall be subordinate to the Superpriority Claims as defined in *Debtors' Motion Seeking Entry of an Order (I) Authorizing Certain Debtors to Continue Selling, Contributing, and Servicing Receivables and Related Rights Pursuant to the Receivables Program, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the "Securitization Order").

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

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

6. Nothing in the Motion or this Final Order waives or modifies the requirements of the RSA, including without limitation, the consent and consultation rights contained therein.

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

(Page | 6)

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

Case No. 23-14853 (JKS)

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

as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Final Order or the Motion or any order granting the relief requested by the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

(Page | 7)

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

Case No. 23-14853 (JKS)

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

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

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

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

11. Notwithstanding anything to the contrary contained in the Motion or this Final Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* filed substantially contemporaneously herewith (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions

(Page | 8)

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

Case No. 23-14853 (JKS)

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

thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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