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



**DEBTORS' MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO
(A) MAINTAIN AND ADMINISTER THEIR CUSTOMER AND
PARTNER PROGRAMS AND (B) HONOR CERTAIN PREPETITION
OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

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”), (i) authorizing, but not directing, the Debtors to (a) maintain and administer their Customer and Partner Programs (as defined herein) and (b) honor certain prepetition obligations related thereto, and (ii) granting related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-eight days after the commencement of these chapter 11 cases to consider entry of an order approving the relief requested herein on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court,

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.

absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a), 363(b), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

Background

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on-demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (“Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy

Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

The Customer and Partner Programs³

7. The Debtors serve more than 2,000 customers, including industry leading enterprises, service providers, and government agencies. The Debtors sell their products and services directly to end-user customers (“End-Users”), which include, among other things, technical support and installation services for the products purchased by End-Users, as well as project-based deployment, design, and optimization services. The Debtors sell these services directly to customers using Cyxtera-employed salespersons and sales agents who offer certain promotions and special incentives (the “Direct-to-End-User Customer Programs”).

8. Through their global network partner program (the “Cyxtera Global Network Partner Program” and, together with the Direct-to-End-User Customer Programs, the “Customer and Partner Programs”), the Debtors also sell their products and services indirectly to End-Users through a channel-led sales model that leverages third-party partners located around the world to engage in referrals (the “Referral Partners”), resales (the “Resale Partners”), or strategic alliances (the “Alliance and Ecosystem Partners” and, together with the Referral Partners and Resale Partners, the “Channel Partners”) with respect to the Debtors’ products and services. Within the Cyxtera Global Network Partner Program, the Debtors offer three different types of programs:

³ Although the description of the Customer and Partner Programs set forth in this Motion is intended to be comprehensive, the Debtors may have inadvertently omitted some of the Customer and Partner Programs. The Debtors request relief with regard to all Customer and Partner Programs, regardless of whether any individual Customer and Partner Program is specifically identified herein.

(i) the Cyxtera Referral Partner Program; (ii) the Solution Provider and Reseller Program; and (iii) the Cyxtera Ecosystem Partner Program (each as defined herein). On average, direct sales to End-Users make up approximately 75 percent of the Debtors' total bookings and the indirect sales and promotions via Channel Partners make up approximately 25 percent of their total bookings.

9. In the ordinary course, the Debtors have provided the Customer and Partner Programs in the interest of promoting and maintaining customer and partner business and loyalty. As the Debtors operate in a competitive market with increasing pressure and quickly evolving technology, it is important for the Debtors to have positive customer relationships and to maintain a reputation for reliability to ensure that the Debtors' End-Users and Channel Partners continue to purchase, use, and promote the Debtors' products and services. In addition, it is important for the Debtors to be creative in their sales practices, as well as accommodating to their End-Users and Channel Partners (*i.e.*, with respect to Promotions (as defined herein) and the like) so as to attract new business and drive growth.

10. The Debtors believe that their ability to continue the Customer and Partner Programs and to honor any obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, meet competitive market pressures, and ensure customer satisfaction. Continuing the Customer and Partner Programs allows the Debtors to maintain the goodwill of their current customers and partners, attract new customers and partners, and, ultimately, to enhance the Debtors' revenue and profitability.

11. Accordingly, the Debtors seek authorization to continue administering the Customer and Partner Programs and to honor prepetition obligations thereunder in the ordinary course of business as the Customer and Partner Programs are critical to the Debtors' ongoing

operations in these chapter 11 cases and will maximize the value of the estates for the benefit of all of the Debtors' stakeholders.

I. Direct-to-End-User Customer Programs.

A. Promotions.

12. To solicit and retain business, the Debtors provide, in the ordinary course of business, certain incremental upfront discounts and service credits on certain designated Cyxtera products and services (the "Promotions") directly to certain End-Users, including both prepackaged and ad hoc Promotions. With Direct to End-Users making up approximately 75 percent of Cyxtera's total bookings, the Promotions serve as a key revenue driver by enabling the Debtors to retain and grow business and maintain goodwill with their critical End-User customer base.

13. As of the Petition Date, the Debtors estimate that there are no payments outstanding related to Direct-to-End-User Customer Programs. However, the charges for some of the Promotions, such as offering free months of products or services, are applied as a bill credit and certain amounts earned under the Promotions are applied only as a discount to future bills. Accordingly, there may be credits owed to End-Users as of the Petition Date that have not yet been applied to customer accounts. Accordingly, the Debtors seek authority to honor any such prepetition credits incurred on account of the Promotions and to continue offering Promotions and honoring any amounts incurred related thereto in the ordinary course of business on a postpetition basis.

B. Service Adjustments.

14. As a special incentive for End-Users and only upon request, the Debtors offer certain adjustments to End-User billing (the "Service Adjustments") to address billing corrections,

billing errors, and service quality issues. Typically, the Service Adjustments are offered in the form of a billing credit of up to one month of an End-User's monthly recurring payment.

15. Certain Service Adjustments offered prior to the Petition Date may not have been applied to the applicable End-Users' accounts. The Debtors seek authority to honor such Service Adjustments for active End-Users as of the Petition Date without regard to when they arose and to continue offering Service Adjustments, in their business judgement in the ordinary course of business on a postpetition basis.

II. Cyxtera Global Partner Program.

16. As discussed above, the Debtors offer four main programs within the Cyxtera Global Partner Program that are designed to connect customers to the Debtors' expansive ecosystems, generate profitable new revenue, build a robust network of Channel Partners, and maintain relationships between the Debtors and their Channel Partners, who are not contractually obligated to partner exclusively with the Debtors. The Debtors believe that, given their revenue model and the importance of their Channel Partners, maintaining the Cyxtera Global Partner Program is essential to the continued health and sustainability of the Debtors' business.

A. Cyxtera Referral Partner Program.

17. The Debtors offer a referral-based program whereby the Debtors' Referral Partners are eligible to receive commissions on every customer opportunity they refer that enters into a contract with the Debtors for their products and services (the "Cyxtera Referral Partner Program"). The Referral Partners are generally comprised of brokers, referral agents, and influencers. Brokers are eligible to receive a percentage commission fee on new and subsequent customer contracts. Such broker commission fees are paid as a one-time obligation with no future obligations. In addition, referral agents who generate new business, customer expansions, or renewals, in each case after proper registration and acceptance by the Debtors, are eligible to receive monthly

commission payments upon collection of customer invoices. The commission rates vary based on the program level assigned to the referral agent subject to the volume of customer contracts such agent successfully refers. Monthly commissions are based on a percentage of monthly recurring revenue of a customer contract. Influencers who refer new business are eligible to receive upfront payments based on monthly recurring revenue of a new customer contract with no future payment obligations on behalf of the Debtors.

18. On average, the Debtors incur approximately \$15 million per year in commission expenses paid to Referral Partners. As of the Petition Date, the Debtors estimate they owe approximately \$2.5 million in prepetition commissions outstanding related to the Cyxtera Referral Partner Program. The Debtors request authorization to pay all outstanding prepetition and postpetition amounts incurred on account of the Cyxtera Referral Partner Program and to continue the Cyxtera Referral Partner Program in the ordinary course of business on a postpetition basis consistent with past practice.

B. Solution Provider and Reseller Program.

19. The Debtors offer their products and services to Resale Partners, who then resell the Debtors' products to End-Users (the "Solution Provider and Reseller Program"). As part of the Solution Provider and Reseller Program, the Debtors offer Resale Partners incremental upfront discounts on certain designated product and service lines within the Cyxtera portfolio. The Resale Partners, in turn, market, distribute, and resell the Debtors' products and services to End-Users. Resale Partners then remit payments at the discounted rate generated under the contracts they enter into with End-Users back to the Debtors. The Resale Partners who participate in this program include: (i) value added resellers, who are able to add features and services to an existing product by integrating the Debtors' colocation and interconnection capabilities and then reselling a "turn key" solution to End-Users; (ii) managed service providers, who are able to expand their offerings

and increase value to End-Users by deploying end-to-end solutions in the Debtors' data centers; and (iii) network service providers and systems integrators, who are the architects of the solutions surrounding hardware and application variables.

20. The Debtors also have a resale program specific to resellers of the Debtors' products and services to federal agencies (the "Federal Reseller Partner Program"). Resale Partners specific to the Federal Reseller Partner Program include distributors and aggregators, who help agencies deliver optimal business-oriented solutions to the government customer. Because of the nature of the Solution Provider and Reseller Program and the Federal Reseller Partner Program, the Debtors do not have any outstanding liabilities owed to Resale Partners. However, it is critical that the Debtors maintain their relationships and goodwill with the Resale Partners to maintain and drive sales and to not impair the Debtors' supply chain. Therefore, the Debtors request authorization to continue the Solution Provider and Reseller Program and the Federal Reseller Partner Program in the ordinary course of business, including offering discounted products and services to Resale Partners, on a postpetition basis consistent with past practice.

C. Cyxtera Ecosystem Partner Program.

21. The Debtors also host a marketplace (the "Cyxtera Data Center Ecosystem") for Alliance and Ecosystem Partners, including computer, storage, networking, security, and other technology or service providers to market and sell their own products and services to the Debtors' over 2,000 End-Users (the "Cyxtera Ecosystem Partner Program"). Through the Cyxtera Ecosystem Partner Program, the Debtors and their Alliance and Ecosystem Partners attract new and existing customers by facilitating the Cyxtera Data Ecosystem to assist their End-Users in solving for their digital, cloud, and colocation needs. Through promoting the benefits of multiple Alliance and Ecosystem Partners' products and services available in the Cyxtera Data Center Ecosystem to their End-Users, the Debtors have created a centralized marketplace for their

End-Users to achieve all their current and future information technology needs. Additionally, by hosting the Cyxtera Ecosystem Partner Program, the Debtors incentivize their Alliance and Ecosystem Partners, who are not contractually obligated to partner exclusively with the Debtors, to continue the partnership by connecting such partners to a rich ecosystem of providers and services of other End-Users. There is no financial obligation on the Debtors' part to facilitate this program. However, out of an abundance of caution, the Debtors request authorization to continue the Cyxtera Ecosystem Partner Program in the ordinary course of business on a postpetition basis consistent with past practice.

D. Market Development Funds Program.

22. The Debtors also, from time to time, offer funds to their Channel Partners for various market-development and customer-engagement opportunities to build demand between their Channel Partners, Cyxtera, and End-Users (collectively, the "Market Development Funds Program"). Typically, in connection with a given marketing campaign, the Debtors reimburse their Channel Partners a fixed predetermined amount to cover expenses incurred through the marketing of products and services. In other instances, the Debtors may pay their Channel Partners or supplier in advance, depending on the marketing service. As these funds are approved in advance by the Debtors' Chief Revenue Officer and Chief Development Officer, the Debtors are not contractually obligated to participate in the Market Development Funds Program, however, this program remains a key source of sales and End-User generation for the Debtors. Marketing services include, among other things, lead generation, corporate communications, brand marketing, website marketing and advertisement, and promotional events.

23. As of the Petition Date, the Debtors do not currently have any active funds pursuant to the Market Development Funds Program. Accordingly, the Debtors estimate that there are no outstanding prepetition obligations on account of the Market Development Funds Program.

However, the Debtors request authorization to continue the Market Development Funds Program and honor any amounts incurred thereunder in the ordinary course of business on a postpetition basis consistent with past practice.

Basis for Relief

I. Continuing to Honor the Customer and Partner Programs in the Ordinary Course Is Warranted Under Sections 105(a), 363(b), and 1108 of the Bankruptcy Code.

24. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., Miltenberger v. Logansport C. & S.W.R. Co.*, 106 U.S. 286, 311 (1882) (“Many circumstances may exist which may make it necessary and indispensable to the business . . . and the preservation of the property, for the receiver to pay pre-existing debts.”); *In re Lehigh & N. Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (finding payment of prepetition obligations appropriate where (i) such payment “is essential to the continued operation of the [business] during reorganization” and (ii) there exists a “possibility that the creditor will employ an immediate economic sanction, failing such payment.”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–26 (D. Del. 1999) (acknowledging section 105(a) as a standalone statutory basis for the payment of prepetition obligations and synthesizing Third Circuit law into the general rule that payment of such prepetition obligations is appropriate where failure to pay places the business in serious jeopardy). Courts acknowledge several legal theories rooted in the Bankruptcy Code that support the payment of prepetition obligations. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (acknowledging sections 105(a) and 1107(a) of the Bankruptcy Code as statutory bases for paying prepetition obligations).

25. Section 1107(a) of the Bankruptcy Code (i) grants a debtor in possession the “rights . . . and powers . . . of a trustee” and (ii) mandates a debtor in possession to perform “all

the functions and duties . . . of a trustee.” 11 U.S.C. § 1107(a). In turn, section 1108 of the Bankruptcy Code authorizes a debtor in possession to “operate the debtor’s business.” 11 U.S.C. § 1108.

26. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

27. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet*, 242 B.R. at 825–26.

Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & N. Eng. Ry Co.*, 657 F.2d at 581 (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

28. Accordingly, the Court has authority to authorize the Debtors to continue the Customer and Partner Programs, and pay prepetition claims arising thereunder, pursuant to sections 105(a), 363(b), and 1108 of the Bankruptcy Code. Continuing to administer the Customer and Partner Programs without interruption during the pendency of these chapter 11 cases is critical to preserve the value of the Debtors’ assets by, most importantly, preserving customer goodwill and market share, which will benefit from continuing the Customer Programs. This value will inure to the benefit of the Debtors’ estates and their creditors.

29. Failure to honor the Customer and Partner Programs could place the Debtors at a competitive disadvantage in the marketplace, amplifying the negative effect of any customer uncertainty that may arise from these chapter 11 cases. Such uncertainty could erode the Debtors’

hard-earned reputation and brand loyalty, which could adversely impact their prospects for a successful emergence from bankruptcy. Maintaining the Customer and Partner Programs and the corresponding relationships will ensure a smooth transition immediately following the filing of these chapter 11 cases. Accordingly, the Debtors submit that they have shown sufficient cause to warrant the authority to honor the Customer and Partner Programs and to honor any customer and partner obligations relating thereto.

30. Where retaining the loyalty and patronage of customers is critical to successful chapter 11 cases, courts in this district and others have granted relief similar to that requested here. *See, e.g., In re David's Bridal, LLC, et al.*, No. 23-13131 (Bankr. D.N.J. May 18, 2023) (CMG) (authorizing the debtors to administer any customer programs that were in effect prepetition and honor any prepetition obligations related thereto); *In re L'Occitane, Inc.*, No. 21-10632 (Bankr. D.N.J. Feb. 2, 2021) (MBK) (same); *In re SLT Holdco, Inc., et al.* Case No. 20-18368 (Bankr. D.N.J. July 29, 2020) (MBK) (same); *In re RTW Retailwinds, Inc.*, No. 20-18445 (Bankr. D.N.J. July 15, 2020) (JKS) (same); *In re Modell's Sporting Goods, Inc., et al.*, Case No. 20-14179 (Bankr. D.N.J. June 23, 2020) (VFP) (same).⁴

II. Continuing the Customer and Partner Programs and Honoring the Customer Obligations is in the Best Interests of the Debtors' Businesses and Their Estates.

31. Continuing to administer the Customer and Partner Programs without interruption during the pendency of these chapter 11 cases will help to preserve the Debtors' valuable customer and partner relationships and goodwill, and to maintain business and drive additional business, which will inure to the benefit of all of the Debtors' stakeholders and their estates. If the Debtors are unable to continue the Customer and Partner Programs postpetition or pay amounts due and

⁴ Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request made to the Debtors' proposed counsel.

fulfill obligations owing on account of the Customer and Partner Programs, the Debtors risk alienating certain partners and customer constituencies (who might then initiate business relationships with the Debtors' competitors) and suffer corresponding losses in customer acquisitions and loyalty that will harm the Debtors' prospects for reorganization or otherwise damage the value of the estates. Importantly, the Debtors' competitors maintain programs similar to the Customer and Partner Programs, meaning that customers have a ready audience willing to meet their needs and take business away from the Debtors at this crucial time.

32. Accordingly, the Debtors submit that they have shown cause sufficient to warrant the authority to honor the Customer and Partner Programs and to honor any customer obligations relating thereto, and respectfully request that the relief sought herein be approved on the terms set forth in the proposed Interim and Final Orders.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

33. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Continuing to administer the Customer and Partner Programs is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

Request of Waiver of Stay

34. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

Waiver of Memorandum of Law

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

Reservation of Rights

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

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

No Prior Request

37. No prior request for the relief sought in this motion has been made to this or any other court.

Notice

38. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) Mayer Brown LLP, as counsel

to PNC Bank, N.A.; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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

Dated: June 4, 2023

/s/ Michael D. Sirota

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

Exhibit A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Edward O. Sassower, P.C. (<i>pro hac vice pending</i>) Christopher Marcus, P.C. (<i>pro hac vice pending</i>) Derek I. Hunter (<i>pro hac vice pending</i>) 601 Lexington Avenue New York, New York 10022 Telephone: (212) 446-4800 Facsimile: (212) 446-4900 edward.sassower@kirkland.com christopher.marcus@kirkland.com derek.hunter@kirkland.com	
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<i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re:	Chapter 11
CYXTERA TECHNOLOGIES, INC., <i>et al</i>	Case No. 23-14853 (JKS)
Debtors. ¹	(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.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO (A) MAINTAIN AND ADMINISTER
THEIR CUSTOMER AND PARTNER PROGRAMS AND
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED
THERE TO AND (II) AND GRANTING RELATED RELIEF**

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

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Finals Orders (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), (i) authorizing the Debtors to (a) maintain and administer the Customer and Partner Programs in the ordinary course of business and (b) honor certain undisputed prepetition obligations related thereto, and (ii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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Case No. 23-14853 (JKS)
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after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.
2. The Final Hearing on the Motion will be held on _____, **2023 at _____ (Eastern Time)**. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by the Debtors' proposed counsel on or before _____, **2023 at 4:00 p.m. (Eastern Time)**. If no objections are filed to the Motion, the Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.
3. The Debtors are authorized, but not directed, to continue to administer the Customer and Partner Programs (including, but not limited to, those discussed in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer and Partner Programs, in each case in the ordinary course of business, consistent with prepetition practices, and to modify, replace, or terminate any Customer and Partner Program in the ordinary course of business; *provided* that if the Debtors modify the Customer and Partner Programs, the Debtors shall provide notice of such modification or termination to the Ad Hoc First Lien Group, PNC Bank, N.A., the U.S. Trustee for the District of New Jersey, and any appointed statutory committee within five (5) days.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors'

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Case No. 23-14853 (JKS)
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designation of any particular check or electronic payment request as approved by this Interim Order.

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

6. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type

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

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

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

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

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

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

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

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

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

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

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

Case No. 23-14853 (JKS)

Caption of Order: Interim Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

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

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

Exhibit B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Edward O. Sassower, P.C. (<i>pro hac vice pending</i>) Christopher Marcus, P.C. (<i>pro hac vice pending</i>) Derek I. Hunter (<i>pro hac vice pending</i>) 601 Lexington Avenue New York, New York 10022 Telephone: (212) 446-4800 Facsimile: (212) 446-4900 edward.sassower@kirkland.com christopher.marcus@kirkland.com derek.hunter@kirkland.com	
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	
<i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re:	Chapter 11
CYXTERA TECHNOLOGIES, INC., <i>et al</i>	Case No. 23-14853 (JKS)
Debtors. ¹	(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.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO (A) MAINTAIN AND
ADMINISTER THEIR CUSTOMER AND PARTNER
PROGRAMS AND (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO AND (II) AND GRANTING RELATED RELIEF**

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

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), (i) authorizing the Debtors to (a) maintain and administer the Customer and Partner Programs in the ordinary course of business and (b) honor certain undisputed prepetition obligations related thereto, and (ii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein, and other parties in interest; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY**

ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Debtors are authorized, but not directed to continue to administer the Customer and Partner Programs (including, but not limited to, those discussed in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer and Partner Programs, in each case in the ordinary course of business, consistent with prepetition practices, and to modify, replace, or terminate any Customer and Partner Program in the ordinary course of business; *provided*, that if the Debtors modify the Customer and Partner Programs, the Debtors shall provide notice of such modification or termination to the Ad Hoc First Lien Group, PNC Bank, N.A., the U.S. Trustee for the District of New Jersey, and any appointed statutory committee within five (5) days.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.
4. Nothing in the Motion or this Final Order waives or modifies the requirements of the RSA, including, without limitation, the consent and consultation rights contained therein.
5. Notwithstanding anything to the contrary contained in the Motion or this Final Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder

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shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of the DIP Orders, including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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

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

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

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

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

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

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

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

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