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

<p>In re:</p> <p>CYXTERA TECHNOLOGIES, INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 23-14853 (JKS)</p> <p>(Joint Administration Requested)</p>
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**DEBTORS' MOTION FOR ENTRY OF ORDER
(I) AUTHORIZING CYXTERA TECHNOLOGIES, INC. TO
ACT AS FOREIGN REPRESENTATIVE, AND (II) GRANTING RELATED RELIEF**

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.



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. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing Cyxtera Technologies, Inc. (“Cyxtera”) to act as the Foreign Representative (as defined herein) on behalf of the Debtors’ estates in the Canadian Proceeding (as defined herein) and (b) granting related relief.

Jurisdiction and Venue

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

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

4. The bases for the relief requested herein are sections 105(a) and 1505 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

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 meanings ascribed to them in the First Day Declaration.

Background

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

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

Appointment of Foreign Representative

7. Cyxtera Communications Canada, ULC and Cyxtera Canada TRS, ULC are Canadian unlimited liability corporations, and Cyxtera Canada LLC is a Delaware corporation

(collectively, the “Canada Debtors”). Cyxtera Communications Canada, ULC is the shareholder of Cyxtera Canada TRS, ULC, and Cyxtera Canada LLC is the shareholder of Cyxtera Communications Canada, ULC. Cyxtera, as the proposed Foreign Representative (as defined herein), will shortly seek ancillary relief in Canada on behalf of the Debtors’ estates in a court of proper jurisdiction in Alberta, Canada (the “Canadian Court”) pursuant to the Companies’ Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 (as amended, the “CCAA”). The purpose of the ancillary proceeding (the “Canadian Proceeding”) is to request that the Canadian Court recognize the Debtors’ chapter 11 cases as “foreign main proceedings” under the applicable provisions of the CCAA to, among other things, protect the Debtors’ assets and operations in Canada.

8. To commence the Canadian Proceeding, the Debtors require authority for a Debtor entity to act as the “foreign representative”³ on behalf of the Debtors’ estates (the “Foreign Representative”). Therefore, the Debtors request authority to appoint Cyxtera as such Foreign Representative.

9. More specifically, section 46 of the CCAA provides in part:

- a. **Application for recognition of a foreign proceeding.** — A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.
- b. **Documents that must accompany application.** — . . . the application must be accompanied by . . . (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate

³ A “foreign representative” is defined in section 45(1) of the CCAA to mean “a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding.”

from the foreign court affirming the foreign representative's authority to act in that capacity . . .

CCAA, R.S.C., Ch. C-36, § 46 (1985) (Can.).

10. Accordingly, for Cyxtera to seek recognition as the Foreign Representative in the Canadian Proceeding, and thereby apply to have the Debtors' chapter 11 cases recognized by the Canadian Court, this Court must enter an order authorizing Cyxtera to act as the Foreign Representative in the Canadian Proceeding. If the order is granted, Cyxtera will be able to file the order with the Canadian Court as the instrument authorizing Cyxtera to act as the Foreign Representative pursuant to section 46 of the CCAA.

Basis for Relief

11. Section 1505 of the Bankruptcy Code provides that "[a] trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law." 11 U.S.C. § 1505. Further, section 1107(a) of the Bankruptcy Code provides, in relevant part, that "a debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter." 11 U.S.C. § 1107(a).

12. The Debtors respectfully submit that sections 1505 and 1107 of the Bankruptcy Code confer upon Cyxtera, as a debtor in possession, sufficient rights, powers, and duties to act as a Foreign Representative of the Debtors' estates in the Canadian Proceeding. To avoid any possible confusion or doubt regarding this authority and to comply with the requirements of section 46 of the CCAA, the Debtors seek entry of an order, pursuant to section 1505 of the Bankruptcy Code, explicitly authorizing Cyxtera to act as the Foreign Representative of the Debtors' estates in the Canadian Proceeding.

13. Authorizing Cyxtera to act as the Foreign Representative on behalf of the Debtors' estates in the Canadian Proceeding will allow for coordination between these chapter 11 cases and the Canadian Proceeding, and provide an effective mechanism to protect and maximize the value of the Debtors' assets and estates. Indeed, courts across various jurisdictions have granted relief similar to that requested herein in other large chapter 11 cases where a debtor has foreign assets or operations requiring a recognition proceeding. *See, e.g., In re David's Bridal, LLC*, Case No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023); *In re Armstrong Flooring, Inc.*, Case No. 22-10426 (MFW) (Bankr. D. Del. May 11, 2022); *In re Grupo Aeromexico, S.A.B. de C.V.*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y. July 1, 2020); *In re Skillsoft Corporation*, Case No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020); *In re LATAM Airlines Grp. S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. May 28, 2020). Accordingly, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

Waiver of Memorandum of Law

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

Notice

15. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors

operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Remainder of page intentionally left blank.]

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

Dated: June 4, 2023

/s/ Michael D. Sirota

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

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
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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.

**ORDER (I) AUTHORIZING CYXTERA TECHNOLOGIES, INC.
TO ACT AS FOREIGN REPRESENTATIVE, AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through five (5), is
ORDERED.

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Authorizing Cyxtera Technologies, Inc. to Act as Foreign Representative, and (II) Granting Related Relief

Upon the motion (the “Motion”),² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing Cyxtera Technologies, Inc. (“Cyxtera”) to act as foreign representative on behalf of the Debtors’ estates pursuant to section 1505 of the Bankruptcy Code and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein; and this Court having found that the Debtors’ notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

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

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Authorizing Cyxtera Technologies, Inc. to Act as Foreign Representative, and (II) Granting Related Relief

2. Cyxtera is hereby authorized to act as the Foreign Representative on behalf of the Debtors' estates in connection with the Canadian Proceeding. As Foreign Representative, Cyxtera shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including (a) seeking recognition of the Debtors' chapter 11 cases in the Canadian Proceeding, (b) requesting that the Canadian Court lend assistance to this Court in protecting the Debtors' property, and (c) seeking any other appropriate relief from the Canadian Court that Cyxtera deems just and proper in the furtherance of the protection of the Debtors' estates.

3. This Court requests the aid and assistance of the Canadian Court to recognize the Debtors' chapter 11 cases as a "foreign main proceeding" and Cyxtera as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

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

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

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

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Authorizing Cyxtera Technologies, Inc. to Act as Foreign Representative, and (II) Granting Related Relief

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

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