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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) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS 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 interim and final orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), (a) authorizing the Debtors to (i) pay all prepetition wages, salaries, Commissions, other compensation, and Reimbursable Expenses on account of the Compensation and Benefits (each as defined herein) and (ii) continue to administer the Compensation and Benefits in the ordinary course of business, including payment of prepetition obligations related thereto, and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately twenty-eight days after the commencement of these chapter 11 cases to consider entry of the Final Order.

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

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.

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), 362(d), 363(b), 507(a), and 541(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, 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’ Workforce

7. As of the Petition Date, Cyxtera employs approximately 657 employees, of which 582 are employed by the Debtors (the “Employees”) and nearly all of whom are full-time. Approximately 563 of the Debtors’ Employees work in the United States (the “U.S. Employees”) and approximately 19 work outside the United States (the “Non-U.S. Employees”).³ The Employees include personnel who are intimately familiar with the Debtors’ business, processes, and systems, and possess unique skills and experience with respect to the Debtors’ core business segments. As a global data center provider, technically skilled employees are imperative to the Debtors’ business operations. Without the continued, uninterrupted services of the Employees, the Debtors’ business operations will come to a halt, materially impairing the administration of the Debtors’ estates. In addition to the Employees, the Debtors’ workforce also includes approximately three independent contractors (the “Independent Contractors”), who perform necessary accounting and finance services for the Debtors.

³ For the avoidance of doubt, the relief sought under this Motion relates only to payments made to individuals who are employed by the Debtors.

8. The vast majority of the Employees and Independent Contractors rely on their compensation and benefits to pay their daily living expenses. These workers will be unfairly harmed if the Debtors are not permitted to continue paying compensation and providing health insurance and other benefits during these chapter 11 cases. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Compensation and Benefits

9. To minimize the personal hardship that Employees and Independent Contractors could suffer if prepetition obligations related thereto remain unpaid during these chapter 11 cases, the Debtors seek authority, but not direction, to: (a) pay and honor certain prepetition claims relating to, among other things, Wage Obligations, Withholding Obligations, Reimbursable Expenses, Health and Welfare Coverage and Benefits, the Workers' Compensation Program, the 401(k) Plan (including the 401(k) Matching Contributions) and other retiree benefits, the Foreign Retirement Plans, Paid Leave Benefits, the Non-Insider Severance Program, the Non-Insider Retention Bonus Program, Non-Insider Severance Benefits, Additional Benefits Programs, the Non-Employee Director Compensation, and certain other benefits that the Debtors have provided in the ordinary course (each as defined herein, and collectively, the "Compensation and Benefits")⁴ and (b) pay all costs related to or on account of the Compensation and Benefits.

⁴ The descriptions of the Compensation and Benefits set forth in this Motion constitute a summary only. The actual terms of the agreements, contracts, plans, programs, and manuals governing the Compensation and Benefits will govern in the event of any inconsistency with the description in this Motion. The Debtors request authority to honor obligations related to Compensation and Benefits in the ordinary course of business consistent with prepetition practices, regardless of whether the Debtors inadvertently failed to include a particular benefit or aspect of compensation in the defined term "Compensation and Benefits," and any such omitted benefit or aspect of compensation is hereby included in the defined term "Compensation and Benefits" as used herein and in the Interim Order and Final Order.

10. Subject to the Court’s approval, the Debtors intend to continue their prepetition Compensation and Benefits in the ordinary course of business. Out of an abundance of caution, the Debtors request confirmation of their right to modify, change, and/or discontinue any of their Compensation and Benefits and/or to implement new programs, policies, and benefits in the Debtors’ sole discretion and in the ordinary course during these chapter 11 cases without the need for further Court approval, subject to applicable law.

I. Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses.

A. Wage Obligations.

11. In the ordinary course of business, the Debtors have incurred obligations to their Employees for Employee Compensation, Independent Contractor Obligations, Commissions, and Transitioned Employee Compensation (each as defined below and collectively, the “Wage Obligations”). As of the Petition Date, the Debtors estimate that they owe approximately \$7.406 million on account of accrued but unpaid Wage Obligations. The authority to pay Wage Obligations and continue paying their Employees and Independent Contractors is critical to the Debtors’ ability to maintain and administer their estates. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor the Wage Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business. Furthermore, as of the Petition Date, the Debtors believe that they do not owe Wage Obligations in excess of the statutory cap of \$15,150 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the “Statutory Cap”) to any Employees. However, out of an abundance of caution, the Debtors seek authority to pay any amounts above the cap solely pursuant to the Final Order.

i. Employee Compensation.

12. In the ordinary course of business, the Debtors incur obligations to their Employees for wages, overtime, and similar obligations (the “Employee Compensation”). Because Employees are generally paid in arrears, certain Employees are owed accrued but unpaid Employee Compensation as of the Petition Date (the “Unpaid Employee Compensation”). Employee Compensation may also be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees, or as a result of Employees holding uncashed paper paychecks as of the Petition Date.

13. The majority of the Debtors’ payroll is made by direct deposit through electronic transfer of funds to the Employees’ bank accounts or other electronic means on a bi-weekly basis for U.S. Employees and on a bi-weekly or monthly basis for Non-U.S. Employees. All Employee Compensation accrues on either a salaried or hourly basis. As of the Petition Date, the Debtors believe there are approximately \$2.85 million in prepetition amounts outstanding on account of accrued but Unpaid Employee Compensation. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Unpaid Employee Compensation, including any prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors’ business.

ii. Independent Contractors.

14. In the ordinary course of business, the Debtors incur payment obligations to their Independent Contractors for services rendered to the Debtors (the “Independent Contractor Obligations”). The Debtors pay their Independent Contractors on a monthly basis at an agreed market rate for the services provided. The Independent Contractors perform critical accounting

and finance services that support the Debtors' Employees and operations. The Debtors believe that continuing to pay their Independent Contractors is critical to maintaining and administering their estates.

15. On average, the Debtors spend approximately \$28,000 per month on Independent Contractor Obligations. As of the Petition Date, the Debtors estimate that they owe approximately \$56,000 in accrued but unpaid Independent Contractor Obligations (the "Unpaid Independent Contractor Obligations"). Accordingly, the Debtors seek authority, but not direction, to pay prepetition Unpaid Independent Contractors Obligations and continue honoring Independent Contractor Obligations in the ordinary course of the Debtors' business.

iii. Unpaid Commissions.

16. In the ordinary course of business, the Debtors pay sales-based commissions to approximately 159 non-Insider⁵ Employees (the "Non-Insider Commissions") and one Insider Employee (the "Insider Commissions,"⁶ and together with the Non-Insider Commissions, the "Commissions"). These Employees market and sell the Debtors' products and services and generally receive commission payments in varying percentages based on the monthly recurring revenue generated by new sales on account of the Employee's efforts as well as the net revenue growth of each individual Employee's portfolio. Non-Insider Commissions are paid monthly in arrears and Insider Commissions are paid quarterly in arrears.

⁵ As such term is defined in section 101(31) of the Bankruptcy Code (the "Insiders"). For the avoidance of doubt, the Debtors reserve all rights with respect to the classification of any Employee as an "Insider," and no description of any Compensation and Benefits hereunder indicating that such Compensation and Benefits covers or is made available to "Insiders" or "non-Insiders" shall be construed as an admission or concession by the Debtors that any Employee of the Debtors is an "Insider."

⁶ For the avoidance of doubt, the Debtors shall not make any non-ordinary course additional compensation, bonus, incentive, or severance payments to any Insider without further order of this Court.

17. The Commissions are an important part of eligible Employees' overall compensation packages and motivate the Employees to maximize their sales performance. Many of the Employees rely on the Commissions for their daily living expenses such that the failure to pay Commissions would impose undue hardship. On average, the Debtors spend approximately \$1.5 million per month on Commissions. As of the Petition Date, the Debtors owe approximately \$1.5 million in accrued but unpaid Commissions (the "Unpaid Commissions"), all of which is owed on account of Non-Insider Commissions and none of which is owed on account of Insider Commissions.

18. For the avoidance of doubt, accrued and unpaid prepetition Commissions do not exceed the Statutory Cap. Due to the particular importance of Commissions to the Debtors' business, including their ability to maintain workforce morale and sales momentum during these chapter 11 cases, the Debtors seek authority, but not direction, to pay all outstanding Commissions, including prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors' business.

iv. Transitioned Employees.

19. On May 1, 2017, the Debtors completed the acquisition of Lumen Technologies, Inc.'s ("Lumen") colocation business and its associated data centers. As part of that transaction, a number of Employees transitioned from Lumen to the Debtors (the "Transitioned Employees"). There are fifteen remaining Transitioned Employees, who are paid wages, overtime, and similar obligations (the "Transitioned Employee Compensation") by Lumen, and the Debtors reimburse Lumen for the Transitioned Employee Compensation in the ordinary course of business. Because Employees are generally paid in arrears, certain Transitioned Employees are owed accrued but unpaid Transitioned Employee Compensation as of the Petition Date (the "Unpaid Transitioned Employee Compensation"). As described above, Transitioned Employee Compensation may also

be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Transitioned Employees believe they should have been paid, or as a result of issued but uncashed paper paychecks as of the Petition Date.

20. The Debtors reimburse Lumen on a monthly basis. As of the Petition Date, the Debtors estimate that they owe approximately \$300,000 on account of accrued but Unpaid Transitioned Employee Compensation. Accordingly, the Debtors seek authority, but not direction, to pay all outstanding Unpaid Transitioned Employee Compensation, including prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors' business.

B. Withholding Obligations.

21. In the ordinary course of business, the Debtors incur obligations on account of Payroll Deductions and Payroll Taxes (each as defined below and collectively, the "Withholding Obligations"). The Debtors accumulate a monthly average of approximately \$2.4 million on account of the Withholding Obligations. As of the Petition Date, the Debtors believe there are approximately \$1.2 million in prepetition amounts outstanding on account of Withholding Obligations. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Withholding Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business.

i. Payroll Deductions.

22. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees' paychecks, including garnishments and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee's share of healthcare benefits and insurance premiums, 401(k) contributions, legally ordered deductions, and miscellaneous deductions (collectively,

the “Payroll Deductions”), and forward the Payroll Deductions to various third-party recipients. The Debtors retain only those Payroll Deductions related to the Employees’ share of health care benefits and insurance premiums. As of the Petition Date, the Debtors believe there are approximately \$400,000 in prepetition amounts outstanding on account of Payroll Deductions. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Payroll Deductions and to pay any prepetition claims with respect thereto in the ordinary course of business.

ii. Payroll Taxes.

23. In addition to the Payroll Deductions, certain federal and state laws require that the Debtors withhold amounts from Employees’ gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authorities (the “Employee Payroll Taxes”). The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (the “Employer Payroll Taxes” and, together with the Employee Payroll Taxes, the “Payroll Taxes”). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities in accordance with remittance intervals and deadlines established by those taxing authorities. As of the Petition Date, the Debtors believe there are approximately \$800,000 in prepetition amounts outstanding on account of Payroll Taxes. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Payroll Taxes and to pay any prepetition claims with respect thereto in the ordinary course of business.

C. Payroll Processing.

24. Certain Withholding Obligations for the Debtors' Employees are processed and administered by Ultimate Kronos Group Inc. ("UKG"). The Debtors incur a monthly average of approximately \$16,200 on account of payroll processing and application hosting services provided by UKG. As of the Petition Date, the Debtors estimate they owe approximately \$16,200 on account of prepetition payroll processing services (the "Unpaid Payroll Processing Fees"). Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Unpaid Payroll Processing Fees and to pay any prepetition claims with respect thereto in the ordinary course of business.

D. Reimbursable Expenses.

25. Prior to the Petition Date and in the ordinary course of business, the Debtors reimburse certain Employees for expenses incurred on behalf of the Debtors within the scope of their employment (the "Reimbursable Expenses").⁷ Reimbursable Expenses include, among other expenses, travel-related expenses and business-related entertainment expenses. Employees who pay for their own Reimbursable Expenses up front apply for reimbursement of such expenses by submitting an expense report to the Debtors. Once the Debtors have determined that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Employees for the expenses.

⁷ For the avoidance of doubt, the Debtors also provide certain Employees with credit cards to cover travel and related expenses. However, the Debtors do not seek authority to maintain the credit cards or to pay prepetition amounts related thereto under this Motion, but rather request such authority as part of the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief* filed contemporaneously herewith.

26. The Debtors incur a monthly average of approximately \$20,000 on account of Reimbursable Expenses. Additionally, as of the Petition Date, the Debtors estimate that they owe approximately \$40,000 on account of Reimbursable Expenses. The Debtors' inability to reimburse Employees for the Reimbursable Expenses could impose a hardship on the Employees where such individuals incurred obligations for the Debtors' benefit. Employees incurred the Reimbursable Expenses as business expenses on the Debtors' behalf and with the understanding that such expenses would be reimbursed. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Reimbursable Expenses and to pay any prepetition claims with respect thereto in the ordinary course of business consistent with prepetition practices.

II. Health and Welfare Coverage and Benefits.

27. The Debtors have offered their Employees the ability to participate in a number of health, insurance, and benefits programs, including, among other programs, Medical and Prescription Coverage, Supplemental Medical Gap Coverage, Foreign Sponsored Health Plans, HSAs, FSAs, Life Insurance Coverage, Dental Insurance Coverage, Vision Insurance Coverage, Employee Assistance Program, and the Rally Wellness Benefits (each as defined herein). The Debtors also historically subsidize or continue to provide certain benefits to certain former Employees after their termination, retirement, or disability leave, including, without limitation, benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA," and, together with the Medical and Prescription Coverage, Supplemental Medical Gap Coverage, Foreign Sponsored Health Plans, HSAs, FSAs, Life Insurance Coverage, Dental Insurance Coverage, Vision Insurance Coverage, Employee Assistance Program, Rally Wellness Benefits, the "Health and Welfare Coverage and Benefits"). The Health and Welfare Coverage and Benefits are, in each case, available to full-time Employees (the "Eligible Employees").

28. The Debtors' Health and Welfare Coverage and Benefits include:

- (a) **U.S. Medical and Prescription Coverage:** The Debtors provide Eligible U.S. Employees with medical and prescription coverage programs ("Medical and Prescription Coverage") through (i) self-funded plans administered by United Health Care ("United") and (ii) fully-insured plans administered by Kaiser Permanente ("Kaiser"). The Kaiser plans are only offered to a subset of California Employees, approximately twenty-five of which are enrolled in Kaiser plans. Under the United plan, U.S. Employees can choose between two plan options with varying premiums and HSA (as defined herein) contributions. On average, the Debtors cover approximately 76 percent of the cost of premiums, while the Employees cover the remaining 24 percent. Legal spouses, domestic partners, and dependent children are eligible dependents and can be additionally covered. Approximately 92 percent of U.S. Employees enroll in Medical and Prescription Coverage. The monthly cost of the Medical and Prescription Coverage to the Debtors is approximately \$650,000. As of the Petition Date, the Debtors estimate they owe approximately \$650,000 on account of accrued but unpaid Medical and Prescription Coverage premiums.
- (b) **U.S. Supplemental Medical Gap Coverage:** The Debtors provide U.S. Employees with a supplemental medical gap coverage program ("Supplemental Medical Gap Coverage") through carrier Transamerica Life which covers supplemental medical needs such as inpatient hospital procedures and routine nursery care for dependent children. U.S. Employees must choose to opt into the Supplemental Medical Gap Coverage. The Debtors cover 100 percent of the cost of premiums under the Supplemental Medical Gap Coverage. Approximately 200 U.S. Employees have Supplemental Medical Gap Coverage. On average, monthly premiums on account of the Supplemental Medical Gap Coverage are approximately \$16,000. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of unpaid Supplemental Medical Gap Coverage.
- (c) **Foreign Sponsored Health Plans:** The Non-U.S. Employees are generally offered similar medical and prescription coverage under either Debtor-sponsored programs (the "Foreign Sponsored Health Plans") or government-sponsored programs. A majority of the Non-U.S. Employees are enrolled in Foreign Sponsored Health Plans, which are administered by various third-party providers, including Canada Life. The Foreign Sponsored Health Plans include coverage for, among other things, hospital visits, general health care, prescription drugs, dental, and vision care. The monthly cost of the Foreign Sponsored Health Plans to the Debtors is

approximately \$15,000. As of the Petition Date, the Debtors estimate that they owe approximately \$15,000 on account of obligations under the Foreign Sponsored Health Plans.

- (d) **Flex Spending Accounts and Health Savings Accounts:** The Debtors provide U.S. Employees with the opportunity to contribute to a dependent care flexible spending account (the “FSA”) and a health savings account (the “HSA”), each administered by Optum Bank. The FSA and the HSA allows U.S. Employees to voluntarily set aside pre-tax funds to pay for eligible health and welfare expenses. The Debtors do not contribute to the FSAs. For the 2023 calendar year, U.S. Employees can contribute up to \$2,500 or \$5,000 to their FSA, depending on the U.S. Employee’s marital status, and up to \$8,750 to their HSA, depending on the U.S. Employee’s age and familial status, and immediately draw on contributions to pay for eligible child and dependent care and health care expenses. The Debtors contribute to U.S. Employee HSAs based on the type of Medical and Prescription Coverage the Employee is enrolled in and whether the coverage includes spouses and/or dependents. The Debtors contribute approximately \$120,000 each month to U.S. Employee HSAs. Additionally, the Debtors pay a monthly administration fee of approximately \$1,200 to Optum Bank on account of the HSAs. As of the Petition Date, the Debtors estimate they owe approximately \$120,000 on account of unpaid HSA contributions and \$1,200 on account of unpaid HSA fees.
- (e) **Life Insurance Coverage:** The Debtors provide (i) basic life and accidental death and dismemberment insurance (at an amount calculated based on 100 percent of the Employee’s annual earnings, up to a fixed maximum amount), (ii) long- and short-term disability insurance to all active Employees who are working thirty or more hours per week, and (iii) supplemental, spouse, and child life products offered on a voluntary, Employee-paid basis (“Life Insurance Coverage”), administered by MetLife. The average monthly cost of the Life Insurance Coverage to the Debtors is approximately \$80,000 excluding voluntary products. As of the Petition Date, the Debtors estimate they owe approximately \$80,000 on account of unpaid Life Insurance Coverage.
- (f) **U.S. Dental Insurance Coverage:** The Debtors offer Eligible U.S. Employees basic and enhanced dental plans administered by Guardian (“Dental Insurance Coverage”). The dental plans provide for both in- and out-of-network coverage. Approximately 59 percent of the dental premiums is employer-paid. The average monthly cost of the Dental Insurance Coverage to the Debtors is approximately \$52,000. As of the Petition Date, the Debtors

estimate they owe approximately \$52,000 on account of unpaid Dental Insurance Coverage.

- (g) **U.S. Vision Insurance Coverage:** The Debtors offer vision insurance plans provided by VSP Vision (“Vision Insurance Coverage”). Approximately 25 percent of the vision premium is employer-paid. The average monthly cost of the Vision Insurance Coverage to the Debtors is approximately \$15,000. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of unpaid Vision Insurance Coverage.

- (h) **COBRA:** The Debtors are required to offer certain of their former U.S. Employees certain health benefits following termination of employment. Pursuant to COBRA, former Employees of the Debtors (the “COBRA Eligible Employees”) may continue using the Medical and Prescription Coverage, Dental Insurance Coverage, and Supplemental Medical Gap Coverage (the “COBRA Benefits”). COBRA Eligible Employees are entitled by law to continue to receive COBRA Benefits for up to eighteen, and occasionally thirty-six, months following termination of employment. The Debtors’ COBRA Eligible Employees are typically responsible for paying all costs associated with the COBRA Benefits except with respect to those former Employees whose COBRA Benefits are consideration under a severance agreement. In such instances where COBRA Benefits are included in a severance agreement, the Debtors pay for three months of COBRA Benefits. The Debtors contribute payments to the COBRA Benefits as part of their lump sum payment under the Non-Insider Severance Program (as defined herein). As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of COBRA Benefits. However, out of an abundance of caution, the Debtors request authority, but not direction, to (a) pay any prepetition amounts outstanding on account of the COBRA Benefits; (b) to continue to offer the COBRA Benefits, including to Employees who may be terminated after the Petition Date, if any, and to honor all postpetition obligations related thereto in the ordinary course of business consistent with past practices; and (c) to continue to pay fees related to the COBRA Benefits in the ordinary course of business on a postpetition basis.

- (i) **U.S. Employee Assistance Program:** The Debtors also provide U.S. Employees with an employee assistance program (the “Employee Assistance Program”) through Optum Behavioral Health designed to offer resources such as short-term counseling. The average monthly cost of the Employee Assistance Program to the Debtors is approximately \$1,200. As of the Petition Date, the

Debtors estimate they owe approximately \$2,400 of unpaid amounts on account of the Employee Assistance Program.

- (j) **U.S. Rally Wellness Benefits:** The Debtors also provide U.S. Employees with certain wellness benefits (the “Rally Wellness Benefits”) through Rally Health designed to offer resources such as well-being and coaching programs. The average monthly cost of the Rally Wellness Benefits to the Debtors is approximately \$3,000. As of the Petition Date, the Debtors estimate they owe approximately \$3,000 of unpaid amounts on account of the Rally Wellness Benefits.

29. The Debtors incur a monthly average of approximately \$953,400 on account of the Health and Welfare Coverage and Benefits. Additionally, as of the Petition Date, the Debtors estimate they owe approximately \$923,600 on account of unpaid Health and Welfare Coverage and Benefits. As described above, failure to continue the Health and Welfare Coverage and Benefits could cause Employees to experience severe hardship and make it difficult to retain the Debtors’ workforce. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Health and Welfare Coverage and Benefits and to pay any prepetition claims with respect thereto in the ordinary course of business.

III. Workers’ Compensation.⁸

30. The Debtors maintain workers’ compensation insurance for their Employees at the statutorily required level for each state in which they have Employees (collectively, and as described herein, the “Workers’ Compensation Program”). As part of the Workers’ Compensation Program, the Debtors maintain a workers’ compensation insurance policy with Hartford (the “Workers’ Compensation Insurance Policy”).

⁸ In addition to the Workers’ Compensation Insurance Policy (as defined below), the Debtors maintain numerous other insurance policies, which are described in the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance and Surety Coverage Entered Into Prepetition and Pay Related Prepetition Obligations, (B) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage and (II) Granting Related Relief*, filed contemporaneously herewith and incorporated herein by reference.

31. The Debtors must continue claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.⁹ There are currently no active open claims under the Workers' Compensation Program. To the extent any Employees assert claims arising under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with such claims. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

32. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that potentially could disrupt the reorganization process. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of accrued but unpaid Workers' Compensation Program obligations. However, out of an abundance of caution, the Debtors request authority, but not direction, to (a) pay prepetition amounts due on account of the Workers' Compensation Program and consistent with past practice, (b) continue the Workers' Compensation Program in the ordinary course of business, and (c) to the extent applicable, modify the automatic stay solely to allow Employees to assert claims under the Workers' Compensation Program.

⁹ The Debtors' Workers' Compensation Program may change postpetition in the ordinary course due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this Motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any necessary modifications thereto.

IV. Retirement Plans

A. The 401(k) Plan.

33. As of the Petition Date, the Debtors maintain a retirement savings plan for the benefit of their U.S. Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the “401(k) Plan”). The 401(k) Plan is administered by Principal Financial Group and allows for automatic pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code.

34. The Debtors also match U.S. Employees’ 401(k) contributions at a rate of 100 percent of an Employee’s first 1 percent of compensation contributed, and 50 percent on contributions between 2 percent and 6 percent of compensation (the “401(k) Matching Contributions”). The 401(k) Matching Contributions are made each February for the prior year.

35. During each calendar year, the Debtors incur approximately \$2.7 million on account of 401(k) Matching Contributions. The Debtors estimate that, as of the Petition Date, there are no amounts outstanding on account of 401(k) Matching Contributions. Out of an abundance of caution, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their 401(k) Matching Contributions if and when they come due in the ordinary course of business.

B. Foreign Retirement Plans.

36. As of the Petition Date, the Debtors maintain certain retirement plans for their Non-U.S. Employees (the “Foreign Retirement Plans”). Non-U.S. Employees located in Canada are able to participate in a registered retirement savings plan (the “RRSP”). The RRSP in Canada is administered by Manulife whereby the Debtors match 50 percent of a Non-U.S. Employee’s contribution up to a maximum of 4 percent of such Non-U.S. Employee’s contribution to the RRSP.

37. As of the Petition Date, the Debtors estimate they have accrued approximately \$10,000 on account of the Foreign Retirement Plans, all of which will become due and owing during the first twenty-one days after the Petition Date. The Debtors seek authorization to continue to satisfy amounts incurred on account of the Foreign Retirement Plans (including any prepetition amounts that may be outstanding) in the ordinary course of business on a postpetition basis.

V. Paid Leave Benefits.

38. The Debtors provide paid time off to certain eligible Employees (the “Paid Leave Benefits”). The Debtors’ Paid Leave Benefits program combines flexible time off, vacation, sick, and bereavement leave. When an Employee elects to use Paid Leave Benefits, that Employee is paid his or her regular hourly or salaried rate. Hourly Employees accrue Paid Leave Benefits at specified rates up to a maximum amount based on the Employee’s years of service. Salaried Employees may elect to use Paid Leave Benefits as needed, subject to management approval. Upon an Employee’s termination, the Debtors will cash out the Employee’s Paid Leave Benefits to the extent required by applicable law.

39. The Debtors believe that the continuation of the Paid Leave Benefits program in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, all Employees have come to depend on the Paid Leave Benefits. As of the Petition Date, the Debtors estimate that they owe approximately \$250,000 on account of accrued but unpaid Paid Leave Benefits. The Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to pay amounts on account of Paid Leave Benefits if and when they come due in the ordinary course of business, to the extent required by applicable law.

VI. Additional Benefit Programs.

40. In addition to the foregoing, the Debtors offer Employees the opportunity to participate in a range of ancillary benefits, including a work from home stipend

(the “WFH Stipend”) and a phone stipend (the “Phone Stipend,” and together with the WFH Stipend, the “Additional Benefit Programs”).

41. The Debtors provide a WFH Stipend to 321 Employees. New hires receive an initial \$300 stipend through such program and all other participating Employees receive a \$100 per month stipend. The Debtors incur a monthly average of approximately \$33,000 on account of the WFH Stipend. Additionally, the Debtors estimate that, as of the Petition Date, there are no amounts outstanding on account of the WFH Stipend.

42. In the ordinary course of business, the Debtors also provide certain Employees located at the Debtors’ call centers and data centers with a Phone Stipend. Such stipend is provided to 140 Employees and the Debtors incur a monthly average of approximately \$9,500 on account of the Phone Stipend. Additionally, the Debtors estimate that, as of the Petition Date, there are no amounts outstanding on account of the Phone Stipend.

43. The Debtors respectfully request that the Court authorize, but not direct, the Debtors to continue to honor their Additional Benefit Programs, and to pay any prepetition claims with respect thereto in the ordinary course of business.

VII. Non-Insider Retention Bonus Program.

44. The Debtors also maintain a retention bonus program for approximately 525 non-Insider Employees (the “Non-Insider Retention Bonus Program”). The Debtors implemented the Non-Insider Retention Bonus Program prepetition to retain their valuable Employees. The Debtors do not maintain any other bonus program for these Employees. The Employees who are eligible work across all of the Debtors’ departments and are non-commission based. The Non-Insider Retention Bonus Program is crucial to retain the Debtors’ valuable Employees. Bonuses are paid at the end of specified two-month retention periods (the “Retention Periods”), with postpetition payments coming due June 30, 2023, and in subsequent periods approximately

every two months through the end of the calendar year. Under the Non-Insider Retention Bonus Program, each participant must remain employed through the applicable Retention Period. If an eligible non-Insider Employee is terminated for any reason other than death or disability or for cause, such Employee is entitled to receive a pro rata portion of the bonus for the Retention Period that the termination occurred. An Employee who resigns voluntarily or is terminated by Cyxtera for cause prior to the vesting of a Retention Period will not be eligible to receive any retention payments for such Retention Period.

45. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of the Non-Insider Retention Bonus Program. The Debtors estimate that the total amount that will come due under the Non-Insider Retention Bonus Program after the Petition Date and during the pendency of these chapter 11 cases is approximately \$7.6 million. Out of an abundance of caution, the Debtors seek authority to pay prepetition amounts on account of the Non-Insider Retention Bonus Program and to continue the Non-Insider Retention Bonus Program on a postpetition basis in the ordinary course of business. For the avoidance of doubt, the relief sought with respect to the Non-Insider Retention Bonus Program does not include payment of any obligations to any Insider. The Debtors shall not make any non-ordinary course bonus or incentive payments to any Insiders without further order of this Court.

VIII. Non-Insider Severance Program.

46. In the ordinary course of business, the Debtors maintain a severance program for the benefit of certain non-Insider Employees (the “Non-Insider Severance Program”). Under the Non-Insider Severance Program, certain Employees may be eligible for payment of severance if their employment is terminated due to any not-for-cause employer-initiated termination. Such severance payments (the “Non-Insider Severance Benefits”) are calculated by reference to a

terminated Employee's weekly salary in accordance with standard Debtor-instituted guidelines. These guidelines provide that non-Insider Employees accrue Non-Insider Severance Benefits based on length of service, subject to a maximum accrual period of twelve or sixteen weeks depending on the Employee's position. Non-Insider Severance Benefits are paid in a lump sum.

47. The Debtors' maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors' workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

48. As of the Petition Date, the Debtors do not believe that any Employees are entitled to Non-Insider Severance Benefits. Accordingly, the Debtors do not believe that there are any prepetition amounts outstanding on account of the Non-Insider Severance Benefits. Out of an abundance of caution, the Debtors seek authority to pay prepetition amounts on account of the Non-Insider Severance Benefits and to continue the Non-Insider Severance Program on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

IX. Non-Employee Director Compensation.

49. As of the Petition Date, the Debtors' board of directors (the "Board") includes eight non-Employee individuals who serve as directors (the "Directors") for Cyxtera Technologies, Inc. Five of the non-Employee Directors receive an average annual equity grant worth \$200,000 and an average annual retainer of approximately \$91,000, which is historically paid on a quarterly basis in arrears (the "Director Fees"). The three disinterested Directors (the "Disinterested Directors") receive monthly cash payments of \$40,000 (the "Disinterested Director Payments"). Non-Employee Directors are also entitled to expense reimbursement for certain Reimbursable

Expenses (the “Director Reimbursable Expenses,” and together with the Directors Fees and the Disinterested Director Payments, the “Director Compensation”).

50. As of the Petition Date, the Debtors do not believe they owe any amounts on account of Director Compensation and believe that they are authorized to pay any postpetition Director Compensation in the ordinary course. However, out of an abundance of caution, the Debtors seek authority to continue to pay the Director Compensation on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

A. Certain of the Compensation and Benefits Are Entitled to Priority Treatment.

51. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Compensation and Benefits to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. To the extent an Employee is owed more than \$15,150 on account of certain Compensation and Benefits (and specifically, Unpaid Commissions), the Debtors submit that the full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

52. The Debtors' Employees and Independent Contractors are essential to the Debtors' business, and payment of the Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtors' ordinary-course operations. Finding, attracting, and training new qualified talent would be extremely difficult absent the relief requested herein. Such recruitment efforts would most likely require, among other things, higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees.

B. Payment of Certain Compensation and Benefits Is Required by Law.

53. As discussed above, the Debtors seek authority, but not direction, to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' wages. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' wages and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors should be authorized to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998). The Debtors therefore request that the Court

recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

54. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all obligations related to the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of these chapter 11 cases.

55. The Debtors, therefore, respectfully request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize, but not direct, the Debtors to transmit such monies to the proper parties in the ordinary course of business.

II. Payment of the Compensation and Benefits Is Warranted Under Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

56. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, bankruptcy courts require only that a debtor show a sound business purpose to justify the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted) (requiring the debtor show a “sound business purpose” to justify its actions under section 363 of the Bankruptcy Code); *see also In re Lionel Corp.*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring a “good business reason” to approve a sale pursuant to section 363(b)); *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.”) (quoting *In re WBQ P’ship*,

189 B.R. 97, 102 (Bankr. E.D. Va. 1995)). Moreover, “[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.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *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.”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

57. Additionally, section 105(a) of the Bankruptcy Code further provides that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, including authorizing payments on account of the Compensation and Benefits pursuant to the doctrine of necessity. 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code, and supports the relief requested herein. *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor’s continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of [prepetition] claims” under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan).

58. The doctrine of necessity is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of chapter 11.”

In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of [prepetition] claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain [prepetition] claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the [c]hapter 11 process”); *In re Chateaugay Corp.*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (affirming lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

59. Payment of the Compensation and Benefits is warranted under this authority and the facts of these chapter 11 cases. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Compensation and Benefits. Additionally, continuing ordinary course benefits will help boost Employee retention and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors’ ongoing business operations.

60. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors’ businesses, and the Debtors believe that absent the payment of the Compensation and Benefits owed to the Employees, the Debtors may experience Employee turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without these payments, the Employees may become demoralized and unproductive because of the potential significant

financial strain and other hardships Employees may face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' business is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases.

61. Courts in this district have granted similar relief to that requested in this Motion in previous chapter 11 cases. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 18, 2023) (authorizing the debtors to (a) pay prepetition employee wages, salaries, and other compensation, and reimbursable expenses, and (b) continue employee benefits programs on a final basis); *In re David's Bridal, LLC*, No.23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023) (same); *In re Block Fi, Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (same); *In re Nat'l Realty Inv. Advisors, LLC*, No. 22-14539 (JKS) (Bankr. D.N.J. Jan. 3, 2023) (same); *In re Alliant Tech., L.L.C.*, No. 21-19748 (JKS) (Bankr. D.N.J. Jan. 25, 2022) (same); *In re Christopher & Banks Corp.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (same).¹⁰ Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay prepetition amounts outstanding on account of Compensation and Benefits, and to continue their prepetition Compensation and Benefits in the ordinary course of business on a postpetition basis.

¹⁰ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

III. The Non-Insider Retention Bonus Program Should Be Approved.

62. The Debtors believe they have authority to continue the Non-Insider Retention Bonus Program as it is an ordinary course continuation of the Debtors' prepetition practices authorized by section 363(c) of the Bankruptcy Code and constitutes a sound exercise of the Debtors' business judgment. *See, e.g., In re Dana Corp.*, 358 B.R. 567, 581 (Bankr. S.D.N.Y. 2006); *In re Glob. Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007). However, out of an abundance of caution, the Debtors further believe that the Non-Insider Retention Bonus Program complies with the requirements of sections 503(b) and (c) of the Bankruptcy Code. Accordingly, for the reasons more fully set forth below, payments under the Non-Insider Retention Bonus Program are justified by the facts and circumstances of the Debtors' chapter 11 cases and should be approved.

63. The Debtors respectfully submit that the provisions otherwise applicable to retention programs pursuant to section 503(c)(1) of the Bankruptcy Code are inapplicable here because no Insiders will participate in the proposed Non-Insider Retention Bonus Program.

B. The Non-Insider Retention Bonus Program Is a Valid Exercise of the Debtors' Business Judgment and Is Justified by the Facts and Circumstances of these Chapter 11 Cases.

64. The standard for determining if the Non-Insider Retention Bonus Program does not run afoul of section 503(c)(3) of the Bankruptcy Code's requirement that such contemplated payments be justified by the facts and circumstances of the case is essentially the same business judgment standard articulated under section 363(b) of the Bankruptcy Code. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) ("Courts have held that the 'facts and circumstances' language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."). Section 503(c)(3) of the Bankruptcy Code generally

prohibits certain transfers made to officers, managers, consultants, and others that are not justified by the facts and circumstances of the case. 11 U.S.C. § 503(c)(3).

65. Here, the business justification supporting the Non-Insider Retention Bonus Program is clear—the Debtors require the key, non-Insider Employees’ specific knowledge and skill sets to preserve and maximize stakeholder value. The Non-Insider Retention Bonus Program Employees are intimately familiar with the Debtors’ operations and many have skills that are unique and difficult to replace. Without the Non-Insider Retention Bonus Program, the Debtors risk the departure of their most crucial Employees. Such departures would likely cause a substantial disruption to the efficiency and future growth of the Debtors’ operations, reducing profits and revenues to the detriment of all parties in interest. Moreover, it is the Debtors’ reasonable belief that the cost of the Non-Insider Retention Bonus Program is less than the cost of recruiting and training replacement Employees to oversee the Debtors’ business and operations. Retaining Employees through the Non-Insider Retention Bonus Program will accordingly maintain stability and allow the Debtors to focus their efforts on reorganizing as effectively as possible. Overall, the Debtors believe that the Non-Insider Retention Bonus Program is vital to retaining Employees and protecting the enterprise value associated therewith.

66. Because implementing the Non-Insider Retention Bonus Program will motivate the Debtors’ Employees to the benefit of all parties in interest, the Non-Insider Retention Bonus Program reflects a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases. *See, e.g., In re Glob. Home Prods., LLC*, 369 B.R. at 784 (“The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor’s business judgment.”); *In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, *4 (Bankr. S.D.N.Y. Sept. 24, 2010) (holding that bonus payments are

“‘justified by the facts and circumstances of the case’ under section 503(c)(3) [where] they are within the ‘sound business judgment’ of the Debtors” (citation omitted)). Accordingly, to the extent necessary, the Non-Insider Retention Bonus Program satisfies section 503(c)(3) of the Bankruptcy Code.

IV. A Limited Waiver of the Automatic Stay for Workers’ Compensation Claims Is Appropriate Here.

67. Section 362(a) of the Bankruptcy Code operates to stay:

“the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .”

11 U.S.C. § 362(a)(1).

68. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers’ compensation claims in the appropriate judicial or administrative forum. Staying the workers’ compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees. In addition, as noted above, if the Debtors fail to maintain the Workers’ Compensation Program, state laws may prohibit the Debtors from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Workers’ Compensation Program to proceed.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

69. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations

and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

70. 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. 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

71. 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

72. 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

73. 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

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

Notice

75. 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) 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 5, 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</i> pending) Christopher Marcus, P.C. (<i>pro hac vice</i> pending) Derek I. Hunter (<i>pro hac vice</i> 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	
<i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re: CYXTERA TECHNOLOGIES, INC., <i>et al</i> 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.

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through ten (10), 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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

Upon the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, 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") (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) 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

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

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

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. The Debtors are hereby authorized, but not directed, to: (a) continue, modify, change, and/or discontinue the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices without the need for further Court approval, subject to applicable law and the terms of this Interim Order, (b) honor and pay any prepetition amounts outstanding under or related to the Compensation and Benefits as and when such obligations are due, in their business judgment during these chapter 11 cases and without the need for further Court approval, subject to applicable law and the terms of this Interim Order; *provided* that pending entry of the Final Order, the Debtors shall not make any payment to, or on account of, any individual with respect to any prepetition claim in excess of \$15,150 as set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and (c) pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

obligations, including the Unpaid Payroll Processing Fees, and all administrative and processing costs.

4. The Debtors shall provide seven (7) days' notice to Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group, the U.S. Trustee for the District of New Jersey, and any statutory committee appointed in the chapter 11 cases, of any non-ordinary course changes or modifications to the programs and policies for their Employees and any new Employee compensation or Employee obligations; *provided, however*, no such non-ordinary course changes or modifications shall be made without consulting with the Ad Hoc First Lien Group; *provided further* that the Debtors shall seek Court approval, upon motion and notice, if any modifications to the Compensation and Benefits obligations implicate any provision of section 503(c) of the Bankruptcy Code.

5. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business, consistent with prepetition practices. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program.

6. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of an Employee if applicable nonbankruptcy law requires such payment.

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

7. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of any obligations owed under any Compensation and Benefits obligations.

8. The Debtors are authorized, but not directed, to pay and honor all claims and obligations, if any, whether arising prepetition or postpetition, on account of the Non-Insider Severance Program; *provided* that the Debtors shall not make any severance payments to the Debtors' Independent Contractors or any Insiders (as that term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

9. The Debtors are authorized to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities, as applicable, in the ordinary course of business, consistent with prepetition practices.

10. The Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to any Insider (as such term is defined in section 101(31) of the Bankruptcy Code) without consulting with the Ad Hoc First Lien Group and further order of this Court; *provided* that, for the avoidance of doubt, nothing in the Motion or this Interim Order shall be construed as approving any payment pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy Code; *provided, further*, that nothing herein shall prejudice the Debtors' ability to seek approval for such relief pursuant to section 503(c) of the Bankruptcy Code at a later time. Nothing in the Motion or this Interim Order shall constitute a determination by the Court as to whether any individual

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

seeking payment pursuant to the Interim Order is or is not an “insider” as that term is defined in section 101(31) of the Bankruptcy Code.

11. 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.

12. 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 of a type specified or defined in this Interim Order or 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, rights under the Bankruptcy Code or any other applicable law; (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

Motion are valid, and the rights of all parties are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (i) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (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.

13. 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.

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

14. 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.

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

16. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

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

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

19. 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.

20. 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.

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

21. 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 Interim Order.

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

23. 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</i> pending) Christopher Marcus, P.C. (<i>pro hac vice</i> pending) Derek I. Hunter (<i>pro hac vice</i> 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	
<i>Proposed Co-Counsel for Debtors and Debtors in Possession</i>	
In re: CYXTERA TECHNOLOGIES, INC., <i>et al</i> Debtors. ¹	Chapter 11 Case No. 23-14853 (JKS) (Joint Administration Requested)

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, 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.

The relief set forth on the following pages, numbered three (3) through nine (9), is **ORDERED.**

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

Case No. 23-

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, 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") (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, 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 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

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

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related 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. The Debtors are hereby authorized, but not directed, to: (a) continue, modify, change, and/or discontinue the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices without the need for further Court approval, subject to applicable law and the terms of this Final Order, (b) honor and pay any prepetition amounts outstanding under or related to the Compensation and Benefits as and when such obligations are due, in their business judgment during these chapter 11 cases and without the need for further Court approval, subject to applicable law and the terms of this Final Order, and (c) pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the Unpaid Payroll Processing Fees, and all administrative and processing costs.
3. The Debtors shall provide seven (7) days' notice to Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group, the U.S. Trustee for the District of New Jersey, and any statutory committee appointed in the chapter 11 cases, of any non-ordinary course changes or modifications to the programs and policies for their Employees and any new Employee compensation or Employee obligations; *provided, however*, no such non-ordinary course changes or modifications shall be made without consulting with the Ad Hoc First Lien Group; *provided further* that the Debtors shall seek Court approval, upon motion and notice, if any modifications

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

to the Compensation and Benefits obligations implicate any provision of section 503(c) of the Bankruptcy Code.

4. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business, consistent with prepetition practice. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program.

5. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Compensation and Benefits obligations.

6. The Debtors are authorized, but not directed, to pay and honor all claims and obligations, if any, whether arising prepetition or postpetition, on account of the Non-Insider Severance Program; *provided* that the Debtors shall not make any severance payments to the Debtors' Independent Contractors or any Insiders (as that term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

7. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of an Employee, if applicable nonbankruptcy law requires such payment.

8. 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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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

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.

9. The Debtors are authorized to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities, as applicable, in the ordinary course of business, consistent with prepetition practice.

10. The Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to any Insider (as such term is defined in section 101(31) of the Bankruptcy Code) without consulting with the Ad Hoc First Lien Group and further order of this Court; *provided* that, for the avoidance of doubt, nothing in the Motion or this Final Order shall be construed as approving any payment pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy Code; *provided, further*, that nothing herein shall prejudice the Debtors' ability to seek approval for such relief pursuant to section 503(c) of the Bankruptcy Code at a later time. Nothing in the Motion or

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

this Final Order shall constitute a determination by the Court as to whether any individual seeking payment pursuant to the Final Order is or is not an “insider” as that term is defined in section 101(31) of the Bankruptcy Code.

11. 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.

12. 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 of a type specified or defined in this Final Order or 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, rights under the Bankruptcy Code or any other applicable law; (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

are valid, and the rights of all parties are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (i) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (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.

13. 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.

14. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

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

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

17. 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.

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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) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

18. 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.

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