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*Co-Counsel for Debtors and
Debtors in Possession*

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

In re:

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

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**NOTICE OF FILING FOURTH AMENDED PLAN
SUPPLEMENT FOR THE FOURTH AMENDED JOINT PLAN OF
REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that, as contemplated by the *Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 694] (as may be amended or modified from time to time and including all exhibits and supplements thereto, the “Plan”),² on November 2, 2023, the

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ 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 cases is 231485324011100000000001, Boulevard, Ste. 900, Coral Gables, Florida 33134.



231485324011100000000001

² Capitalized terms used but not defined in herein have the meanings given to them in the Plan.

above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Notice of Filing Plan Supplement for the Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 650] (the “Plan Supplement”), on November 16, 2023, the Debtors filed the *First Amended Plan Supplement for the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 713] (the “First Amended Plan Supplement”), on December 11, 2023, the Debtors filed the *Second Amended Plan Supplement for the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 790] (the “Second Amended Plan Supplement”), and on January 2, 2024, the Debtors filed the *Third Amended Plan Supplement for the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 843] (the “Third Amended Plan Supplement”) with the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that, on November 17, 2023, the Court entered the *Revised Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 718] (the “Confirmation Order”).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file this amendment to the Plan Supplement (this “Fourth Amended Plan Supplement”) in support of the Plan.

PLEASE TAKE FURTHER NOTICE that the Fourth Amended Plan Supplement includes current drafts of the following documents (certain of which continue to be negotiated pursuant to the terms of the Plan, the RSA, and the Purchase Agreement by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, and will be filed in substantially final form on or prior to the Effective Date):

Exhibit C	Draft Schedules of Assumed and Rejected Executory Contracts and Unexpired Leases
Exhibit C-2	Draft Schedule of Rejected Executory Contracts and Unexpired Leases
Exhibit C-2a	Redline to Previously Filed Draft Schedule of Rejected Executory Contracts and Unexpired Leases
Exhibit D	GUC Trust Agreement
Exhibit Da	Redline to Previously Filed GUC Trust Agreement
Exhibit E	Plan Administrator Agreement
Exhibit Ea	Redline to Previously Filed Plan Administrator Agreement

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights, with the consultation or consent of any applicable counterparties to the extent required under the Plan, the RSA, or the Purchase Agreement, to alter, amend, modify, or supplement the Fourth Amended Plan Supplement and any of the documents contained herein in accordance with the terms of the Plan, the RSA, and the Purchase Agreement; *provided* that if any document in this Fourth Amended Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Effective Date, the Debtors will file a redline of such document with the Bankruptcy Court. The final version of any such document may contain material differences from the version

filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard.

PLEASE TAKE FURTHER NOTICE that the documents contained in the Fourth Amended Plan Supplement are integral to, and are considered part of, the Plan.

PLEASE TAKE FURTHER NOTICE that copies of the Plan, Confirmation Order, Disclosure Statement, Plan Supplement, First Amended Plan Supplement, Second Amended Plan Supplement, Third Amended Plan Supplement, and Fourth Amended Plan Supplement are accessible now, free of charge, on the Debtors' restructuring website, <https://www.kccllc.net/cyxtera>, and upon request of the Debtors' co-counsel, Kirkland & Ellis LLP and Cole Schotz P.C., at the respective addresses specified herein.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases are available free of charge by visiting <https://www.kccllc.net/cyxtera>. You may also obtain copies of any pleadings by visiting the Court's website at <https://ecf.njb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: January 11, 2023

/s/ Michael D. Sirota

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**FOURTH AMENDED PLAN
SUPPLEMENT FOR THE FOURTH AMENDED JOINT
PLAN OF REORGANIZATION OF CYXTERA TECHNOLOGIES, INC. AND ITS
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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Table of Contents²

Exhibit C	Draft Schedule of Assumed and Rejected Executory Contracts and Unexpired Leases
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Exhibit C

Draft Schedules of Assumed and Rejected Executory Contracts and Unexpired Leases

The Debtors have included a schedule of Executory Contracts and Unexpired Leases that they intend to assume as of the Effective Date or assume and assign in accordance with the Purchase Agreement and the Plan's treatment of Executory Contracts and Unexpired Leases. The Debtors reserve their rights to alter, amend, modify, or supplement this **Exhibit C** with the consent of the Purchaser and consistent with the Purchase Agreement.

Certain documents, or portions thereof, contained or to be contained in this **Exhibit C** and the Fourth Amended Plan Supplement remain subject to continued review, as applicable, by the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, and the final version of any such document may contain material differences from the version filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The respective rights of the Debtors, the Required Consenting Term Lenders, the Purchaser, and the Committee, as applicable, are expressly reserved, subject to the terms and conditions set forth in the Plan, the Confirmation Order, the RSA, and the Purchase Agreement (including certain consent and approval rights), to alter, amend, modify, or supplement the Fourth Amended Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan, the Confirmation Order, the RSA, and the Purchase Agreement, or by any other order of the Bankruptcy Court; *provided* that if any document in this Fourth Amended Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Effective Date, the Debtors will file a redline of such document with the Bankruptcy Court.

Article V of the Plan, as approved by the Confirmation Order, provides that each Executory Contract or Unexpired Lease not previously rejected, assumed, or assumed and assigned shall (i) in the event of an Equity Investment Transaction or a Recapitalization Transaction, be deemed assumed or assumed and assigned, as applicable; or (ii) in the event of an Asset Sale, be (a) assumed or assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement, as applicable, if it is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases; (b) assumed and assigned to the Purchaser or a designee in accordance with the Purchase Agreement if it is not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and does not relate exclusively to Excluded Assets or Excluded Liabilities; or (c) rejected if it is (x) listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or (y) not listed on either the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases and relates exclusively to the Excluded Assets or Excluded Liabilities. For the avoidance of doubt, the foregoing shall not affect any Executory Contract or Unexpired Lease that is (i) explicitly designated by the Plan or the Confirmation Order to be assumed or assumed and assigned, as applicable, in connection with the Confirmation of the Plan; (ii) subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (iii) a D&O Liability Insurance Policy; or (iv) a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan. The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates.

Exhibit C-2

Draft Schedule of Rejected Executory Contracts and Unexpired Leases

Draft Schedule of Rejected Executory Contracts and Unexpired Leases

Debtor	Counter Party Name	Description
Cyxtera DC Holdings, Inc	1111 Comstock Property, LLC	Lease guarantee for 1111 Comstock Street, Santa Clara - Powered Shell Lease Agreement
Cyxtera DC Holdings, Inc	1231 Comstock Property, LLC	Lease guarantee for 1231 Comstock Street, Santa Clara - Powered Shell Lease Agreement
Cyxtera Communications, LLC	ABM Industry Groups, LLC	Procurement Standard Terms and Conditions
Cyxtera Netherlands B.V.	AFS Transport (Rotterdam) B.V.	Agreement/Authorisation to Act as Direct Representative
Cyxtera Technologies, LLC	Angelo Paone Électrique Inc.	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Communications Canada, ULC	Angelo Paone Électrique Inc.	Procurement Standard Terms and Conditions
Cyxtera Technologies, LLC	AuditBoard, Inc.	Amendment No. 3 to the Subscription Agreement Dated November 27, 2018
Cyxtera Technologies, LLC	AuditBoard, Inc.	Amendment No. 4 to the Subscription Agreement Dated November 27, 2018
Cyxtera Technologies, LLC	AuditBoard, Inc.	Amendment to the Subscription Agreement Dated May 27, 2023
Cyxtera Technologies, Inc.	Auditboard, Inc.	Subscription Agreement
Cyxtera Technologies, LLC	Buckeye Landscape Service, Inc.	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Communications, LLC	Buckeye Landscape Service, Inc.	Procurement Standard Terms and Conditions
Cyxtera Communications, LLC	Buckeye Landscape Service, Inc.	Procurement Standard Terms and Conditions
Cyxtera Technologies, Inc	Calculated Research & Technology	Master Reseller Agreement
Cyxtera Technologies, Inc.	Citigroup Global Markets Inc.	Engagement Letter
Cyxtera Technologies, Inc	Collins Building Services, Inc.	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Communications, LLC	Collins Building Services, Inc.	Procurement Standard Terms and Conditions
Cyxtera Communications, LLC	Colo Advisor, LLC	REFERRAL AGREEMENT
Cyxtera Management, Inc.	Corporation Service Company (CSC)	Domain hosting agreement
Cyxtera Federal Group, Inc	CTG Federal LLC	FEDERAL RESELLER AGREEMENT
Cyxtera Communications, LLC	Curbside Landscape & Irrigation, Inc.	Procurement Standard Terms and Conditions
Cyxtera Communications, LLC	Curbside Landscape & Irrigation, Inc.	Snow and Ice Management Addendum #1
Cyxtera Communications Canada, ULC	Cyberfortress	Service Order Number - Q - 06953 - 1
Cyxtera Netherlands B.V.	Cyrus One	Turn Key Datacenter Lease (9/30/2019)
Cyxtera Netherlands B.V.	Cyrus One	Variation and Waiver Agreement (9/30/2019)
Cyxtera Netherlands B.V.	CyrusOne AMS3 B.V.	General Terms and Conditions
Cyxtera Netherlands B.V.	CyrusOne AMS3 B.V.	Turn Key Datacenter Lease
Cyxtera Netherlands B.V.	CyrusOne AMS3 B.V.	Variation and Waiver Agreement to Turn Key Datacenter Lease
Cyxtera DC Holdings, Inc	CyrusOne AMS3, B.V.	Lease guarantee for Linieweg 1, Halfweg - TKD Lease
Cyxtera Netherlands B.V.	DC Squad B.V. t/a DC People	Procurement Standard Terms and Conditions
Cyxtera Technologies, LLC	Demandbase, Inc.	Order Form - dated April 28, 2023 / Q - 60501 - 2
Cyxtera Technologies, LLC	Demandbase, Inc.	Order Form - dated May 5, 2023 / Q - 63523 - 1
Cyxtera Netherlands B.V.	DGTE B.V.	Partner Agreement
Cyxtera Netherlands B.V.	DGTE B.V.	Partner Agreement
Cyxtera Netherlands B.V.	DGTE BV	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Netherlands B.V.	DGTE BV	Procurement Standard Terms & Conditions
Cyxtera Technologies, LLC	Diligent Corporation	Order Form
Cyxtera Technologies, Inc.	Diligent Corporation	Service Agreement Amendment
Cyxtera Technologies, LLC	DNA Cleaning Inc	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Communications, LLC	DNA Cleaning Inc	Procurement Standard Terms and Conditions
Cyxtera Management, Inc.	Elevate Consult LLC	Procurement Standard Terms and Conditions
Cyxtera Management, Inc.	Elevate Consult, LLC	GRC Tasks Proposal 2022 Pursuant to Procurement Standard Terms and Conditions Dated March 22, 2021
Cyxtera Technologies, Inc	Elevate Consult, LLC	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Management, Inc.	Elevate Consult, LLC	User Access Reviews Proposal for Cyxtera
Cyxtera Communications, LLC	Equinix do Brasil Soluções De Tecnologia em Informática Ltda	Agreement For Rendering of Services, Leasing and Assignment of Usage Rights (2/3/2011)
Cyxtera Communications, LLC	Equinix do Brasil Soluções De Tecnologia em Informática Ltda	Amendment to Agreement for Rendering Services, Leasing and Assignment of Usage Rights and Commercial Proposal # 1 (5/9/2013)
Cyxtera Communications, LLC	Equinix do Brasil Soluções De Tecnologia em Informática Ltda	Commercial Proposal #1, Annex 1 Infrastructure (10/6/2010)
Cyxtera Management, Inc.	H&CO, LLP	Letter re: Statement of Work

Debtor	Counter Party Name	Description
Cyxtera Federal Group, Inc	Immix Group	Aggregation Agreement
Cyxtera Communications, LLC	Infinite Computer Solutions, Inc.	REFERRAL AGREEMENT
Cyxtera Management, Inc.	Influ2 Inc	Influ2 Terms of Service
Cyxtera Management, Inc.	Influ2 Inc	Order Form #1
Cyxtera Technologies, LLC	Informatica LLC	Quote for Subscription Support Renewal
Cyxtera Communications Canada, ULC	Jani-King of Southern Ontario	Procurement Standard Terms and Conditions
Cyxtera Technologies, LLC	Kimco Facility Services, LLC	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Management, Inc.	Lazard Freres & Co	Engagement Letter Dated December 23 2022
Cyxtera Management, Inc.	Lazard Freres & Co	Letter Agreement Dated December 23 2022
Cyxtera Communications Canada, ULC	Manufacturers Life Insurance Company	Service and fee agreement
Cyxtera Technologies, LLC	Marsden Bldg Maintenance, L.L.C.	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Communications, LLC	Marsden Bldg Maintenance, L.L.C.	Procurement Standard Terms & Conditions
Cyxtera Technologies, LLC	MASH Services of Illinois, Inc. d.b.a. Code Pest Controls	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Communications, LLC	MASH Services of Illinois, Inc. d.b.a. Code Pest Controls	Procurement Standard Terms & Conditions
Cyxtera Communications, LLC	Mayflower Commercial Cleaning, Inc	Janitorial Work Schedule Agreement
Cyxtera Technologies, LLC	Mayflower Commercial Cleaning, Inc	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Netherlands B.V.	Meijers Assurantien B.V.	Service Level Agreement (SLA) Employee Benefits
Cyxtera DC Holdings, Inc.	Moody's Investors Service, Inc.	Application for Moody's Rating Assessment Service
Cyxtera Technologies, Inc.	Morgan Stanley & Co. LLC	Engagement Letter
Cyxtera Communications, LLC	ORANJE Commercial Janitorial	Procurement Standard Terms & Conditions
Cyxtera Federal Group, Inc.	Phronesis Research LLC	Incentivized Consultant Agreement
Cyxtera Federal Group, Inc	Phronesis Research LLC	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Federal Group, Inc.	Phronesis Research LLC	Procurement Standard Terms and Conditions
Cyxtera Communications, LLC	Q4 Inc.	Master Subscription Agreement dated April 2021
Cyxtera Technologies, LLC	Rentokil North America DBA Western Exterminator Company	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Netherlands B.V.	Royale Europe	Agreement/authorisation to act as direct representative
Cyxtera Technologies, LLC	S&P Global Market Intelligence, LLC	451 Research Statement of Work to S&P Licensed Professional Services Agreement
Cyxtera Communications, LLC	S&P Global Market Intelligence, LLC	Reinstatement & Amendment 451 Agreement to the Subscription Agreement Dated June 20, 2017
Cyxtera Technologies, LLC	S&P Global Market Intelligence, LLC	S&P Licensed Professional Service Agreement
Cyxtera Technologies, Inc.	Spoon Exhibit and Events	Final Invoice dated May 19, 2023 / S - 11573 - 22
Cyxtera Technologies, Inc.	Spoon Exhibit and Events	Final Invoice dated May 19, 2023 / S - 11574 - 22
Cyxtera Technologies, Inc.	Spoon Exhibit and Events	Statement of Work Dated March 29, 2022
Cyxtera Technologies, Inc	Spoon Exhibit Services, LLC	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Management, Inc.	Spoon Exhibit Services, LLC	Procurement Standard Terms and Conditions
Cyxtera Management, Inc.	Sullivan & Cromwell, LLP	Engagement Letter
Cyxtera Netherlands B.V.	Tech Data	TechData Credit Application
Cyxtera Netherlands B.V.	Workrate B.V.	Agreement for the provision of security services
Cyxtera Management Inc	Zenab Abbas	Cyxtera Consulting Agreement
Cyxtera Technologies, LLC	Zoho Corporation	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Management, Inc.	Zoho Corporation	Software License Agreement
Cyxtera Management, Inc.	Zoho Corporation Pvt. Ltd. And affiliates	Software License Agreement

Exhibit C-2a

**Redline to Previously Filed Draft Schedule of
Rejected Executory Contracts and Unexpired Leases**

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Cyxtera Federal Group, Inc.	Phronesis Research LLC	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Federal Group, Inc.	Phronesis Research LLC	Procurement Standard Terms and Conditions
Cyxtera Communications, LLC	Q4 Inc.	Master Subscription Agreement dated April 2021
Cyxtera Technologies, LLC	Rentokil North America DBA Western Exterminator Company	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Netherlands B.V.	Royale Europe	Agreement/authorisation to act as direct representative
Cyxtera Technologies, LLC	S&P Global Market Intelligence, LLC	451 Research Statement of Work to S&P Licensed Professional Services Agreement
Cyxtera Communications, LLC	S&P Global Market Intelligence, LLC	Reinstatement & Amendment 451 Agreement to the Subscription Agreement Dated June 20, 2017
Cyxtera Technologies, LLC	S&P Global Market Intelligence, LLC	S&P Licensed Professional Service Agreement
Cyxtera Technologies, Inc.	Spoon Exhibit and Events	Final Invoice dated May 19, 2023 / S - 11573 - 22
Cyxtera Technologies, Inc.	Spoon Exhibit and Events	Final Invoice dated May 19, 2023 / S - 11574 - 22
Cyxtera Technologies, Inc.	Spoon Exhibit and Events	Statement of Work Dated March 29, 2022
Cyxtera Technologies, Inc.	Spoon Exhibit Services, LLC	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Management, Inc.	Spoon Exhibit Services, LLC	Procurement Standard Terms and Conditions
Cyxtera Management, Inc.	Sullivan & Cromwell, LLP	Engagement Letter
Cyxtera Netherlands B.V.	Tech Data	TechData Credit Application
Cyxtera Netherlands B.V.	Workrate B.V.	Agreement for the provision of security services
Cyxtera Management Inc	Zenab Abbas	Cyxtera Consulting Agreement
Cyxtera Technologies, LLC	Zoho Corporation	Mutual Confidentiality and Nondisclosure Agreement
Cyxtera Management, Inc.	Zoho Corporation	Software License Agreement
Cyxtera Management, Inc.	Zoho Corporation Pvt. Ltd. And affiliates	Software License Agreement

Exhibit D

GUC Trust Agreement

CYXTERA TECHNOLOGIES, INC.

GUC TRUST AGREEMENT

This GUC Trust Agreement (as it may be amended, modified, supplemented or restated from time to time, this “GUC Trust Agreement”) dated as of January [12], 2023, is made and entered into by and among Cyxtera Technologies, Inc., and its affiliated debtors,¹ (each a “Debtor” and collectively, the “Debtors”), and META Advisors LLC solely in its capacity as GUC Trustee, for the purpose of forming a trust and is executed in connection with and pursuant to the terms of the *Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No.694] (as it may be amended, modified, supplemented or restated from time to time, the “Plan”), which Plan provides for, among other things, the establishment of the GUC Trust evidenced hereby (the “GUC Trust”).

W I T N E S S E T H

WHEREAS, the Chapter 11 Cases were commenced by the Debtors filing by voluntary chapter 11 petitions in the Bankruptcy Court on June 4, 2023;

WHEREAS, the Bankruptcy Court confirmed the Plan by order dated November 17, 2023 (the “Confirmation Order”) [Docket No.718];

WHEREAS, this GUC Trust Agreement is entered into to effectuate the establishment of the GUC Trust as provided for in the Plan and the Confirmation Order;

WHEREAS, the GUC Trust is established for the benefit of the Holders of Class 4 General Unsecured Claims (“General Unsecured Claims”) as set forth in the Plan;

WHEREAS, the GUC Trust is established for the purpose of collecting, holding, administering, distributing and liquidating the GUC Trust Assets (as defined in the Plan) for the benefit of the Holders of Allowed General Unsecured Claims accordance with the terms of this GUC Trust Agreement and the Plan;

WHEREAS, the GUC Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the GUC Trust as set forth in this GUC Trust Agreement, the Confirmation Order, and the Plan;

WHEREAS, holders of Allowed General Unsecured Claims are entitled to their *pro rata* share of the GUC Trust Net Assets (as defined in the Plan);

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.’s, principal place of business and the Debtors’ service address in these chapter 11 cases is 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

WHEREAS, the GUC Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulations (hereinafter “Treasury Regulations”) Section 301.7701-4(d) and to be exempt from the requirements of the Investment Company Act of 1940;

WHEREAS, the Debtors, the GUC Trustee, and the Holders of Allowed General Unsecured Claims agree to treat, for all U.S. federal income tax purposes, the transfer of the GUC Trust Assets to the GUC Trust as a deemed transfer of the GUC Trust Assets by the Debtors to the Holders of Allowed General Unsecured Claims on account of their Claims under the Plan, followed by a deemed contribution of the GUC Trust Assets by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for the interests herein, and to treat the Holders of Allowed General Unsecured Claims as the grantors and deemed owners of the GUC Trust in accordance with Treasury Regulations Section 301.7701-4;

WHEREAS, the GUC Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Section 671 of the IRC, *et seq.*, with the Holders of Allowed General Unsecured Claims treated as the grantors of the GUC Trust; and

WHEREAS, the Bankruptcy Court shall have jurisdiction over the GUC Trust, the GUC Trustee, and the GUC Trust Assets as provided herein and in the Plan and Confirmation Order.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Debtors and the Trustee agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. All capitalized terms used in this GUC Trust Agreement not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan. The following capitalized terms have the meanings herein as described below:

1.1.1. “Business Day” shall mean any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

1.1.2. “GUC Trustee” shall mean (x) initially, the Person named in the introductory paragraph to this GUC Trust Agreement as the GUC Trustee, and (y) any successors or replacements duly appointed under the terms of this GUC Trust Agreement.

1.2 Plan Terms Control. In the case of any inconsistency between the terms of this GUC Trust Agreement and the terms of the Plan, the terms of the Plan shall govern and control. This GUC Trust Agreement shall not be construed to impair or limit in any way the rights of any Person under the Plan.

ARTICLE II
ESTABLISHMENT, PURPOSE AND FUNDING OF GUC TRUST

2.1 Creation and Name; Formation

2.1.1. Upon the Effective Date of the Plan, the GUC Trust is hereby created. The GUC Trustee may conduct the affairs of the GUC Trust under the name of the “Cyxtera GUC Trust” or such variation thereof as the GUC Trustee sees fit.

2.2 Purpose of GUC Trust. The Debtors and the GUC Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code, hereby establish the GUC Trust (i) for the purpose of administering and distributing the GUC Trust Assets, including without limitation, the prosecution and defense of disputed Claims for the benefit of the Holders of Allowed General Unsecured Claims in accordance with the terms of this GUC Trust Agreement, the Plan, and the Confirmation Order, and (ii) to make distributions to the Holders of Allowed General Unsecured Claims, in each case to the extent required by the Plan and Confirmation Order. The Debtors or Post-Effective Date Debtors, and their Related Parties (as applicable), shall have no liability with respect to the distribution or payment of any GUC Trust Assets to any of the Holders of Allowed General Unsecured Claims, except as otherwise provided for in the Plan. The activities of the GUC Trust shall be limited to those activities set forth in this GUC Trust Agreement and as otherwise contemplated by the Plan. The GUC Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and the primary purpose of the GUC Trust shall be to liquidate and distribute the GUC Trust Assets and the GUC Trustee understands and agrees that the GUC Trust has no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the GUC Trust as set forth in the Plan.

2.3 Transfer of GUC Trust Assets.

2.3.1. On or prior to the Effective Date, the Debtors shall have transferred to the GUC Trust the GUC Trust Assets. Each Debtor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Holders of Allowed General Unsecured Claims, all of the GUC Trust Assets owned, held, possessed or controlled by such Debtor to the GUC Trustee as of the Effective Date, in trust for the benefit of Holders of Allowed General Unsecured Claims, for the uses and purposes as specified in this GUC Trust Agreement and the Plan, and all such GUC Trust Assets are automatically vested in the GUC Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, except as specifically provided in the Plan. None of the Debtors shall have any further obligations with respect to the Allowed General Unsecured Claims under the Plan or the distribution or payment of any proceeds of the GUC Trust Assets to any of the Holders of Allowed General Unsecured Claims upon the transfer of the GUC Trust Assets to the GUC Trust in accordance with this GUC Trust Agreement and the Plan, except that the Debtors or their successor(s), including without limitation, the Post-Effective Date Debtors, shall, from time to time, execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Debtors or their successor (i.e., the Post-Effective Date Debtors) shall take or cause to be taken such further action, in each case as the GUC Trustee may reasonably deem necessary or appropriate, to vest or perfect in or confirm to the GUC Trustee title to and possession of the GUC Trust Assets.

2.3.2. For all U.S. federal, state, and local income tax purposes, the Debtors, the Holders of Allowed General Unsecured Claims, and the GUC Trustee shall treat the transfer of the GUC Trust Assets to the GUC Trust as a deemed transfer of the GUC Trust Assets by the Debtors to the Holders of Allowed General Unsecured Claims on account of their Allowed Claims under the Plan, followed by a deemed contribution of the GUC Trust Assets by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for their interests in the GUC Trust. Thus, the Holders of Allowed General Unsecured Claims shall be treated as the grantors and deemed owners of the GUC Trust for U.S. federal income tax purposes.

2.3.3. To the extent that any GUC Trust Assets cannot be transferred to the GUC Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such GUC Trust Assets shall be deemed to have been retained by the Debtors or their successor and the GUC Trustee shall be deemed to have been designated as a representative of the Debtors or their successor pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such GUC Trust Assets on the behalf of the Debtors or their successor.

2.4 Nature of Trust. This GUC Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a liquidating trust. The GUC Trust is irrevocable but this GUC Trust Agreement is subject to amendment and waiver as provided in this GUC Trust Agreement. The GUC Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, joint stock company or association, nor shall the GUC Trustee, or the Holders of Allowed General Unsecured Claims, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Holders of Allowed General Unsecured Claims, on the one hand, to the GUC Trust and the GUC Trustee, on the other hand, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this GUC Trust Agreement, the Plan and the Confirmation Order.

2.5 Effectiveness. The effectiveness of this GUC Trust Agreement shall occur upon the Effective Date of the Plan.

2.6 Incorporation of the Plan. The Plan and the Confirmation Order are each hereby incorporated into this GUC Trust Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this GUC Trust Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this GUC Trust Agreement.

ARTICLE III ADMINISTRATION OF THE GUC TRUST

3.1 Rights, Powers and Privileges. In connection with the administration of the GUC Trust, and on behalf of the GUC Trust, the GUC Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the GUC Trust (including, without limitation, all powers, rights, and duties under applicable law); provided, that the GUC Trustee shall not

perform any acts that are inconsistent with this GUC Trust Agreement, the Plan, and/or the Confirmation Order. The GUC Trust, acting by and through the GUC Trustee, shall have all of the rights and powers granted to the Debtors or Post-Effective Date Debtors in the Plan as it pertains to General Unsecured Claims and Holders of Allowed General Unsecured Claims, including *inter alia*, without limitation Article III and IV of the Plan, such as, by example only, and in addition to any powers and authority specifically set forth in other provisions of the Plan, the power to:

3.1.1. receive, manage, supervise, and protect the GUC Trust Assets;

3.1.2. hold legal title to any and all rights of the holders of GUC Trust Interests in or arising from the GUC Trust Assets, including, without limitation, collecting and receiving any and all money and/or other property belonging to the GUC Trust;

3.1.3. protect and enforce the rights to the GUC Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

3.1.4. establish and maintain a website for the purpose of providing notice of GUC Trust activities in lieu of sending written notice to holders of GUC Trust Interests, subject to providing notice of such website to such holders;

3.1.5. take or refrain from taking any and all other actions that the GUC Trustee reasonably deems necessary or convenient for the continuation, protection, and maximization of GUC Trust Assets, the protection of interests holders of GUC Trust Interests or to carry out the purposes provided herein;

3.1.6. effect all actions and execute all agreements, instruments and other documents necessary to reconcile and resolve General Unsecured Claims, including without limitation, the right to prosecute setoff, recoupment and any and all other rights in connection with General Unsecured Claims;

3.1.7. establish, as necessary, disbursement accounts for the deposit and distribution of all amounts to be distributed under the Plan to Holders of Allowed General Unsecured Claims;

3.1.8. in reliance upon the Debtors' schedules and the official Claims register maintained in the Chapter 11 Cases, maintain a register evidencing the interest herein held by each Holder of a General Unsecured Claim and, in accordance with section 8.1 of this GUC Trust Agreement;

3.1.9. review, reconcile, allow, prosecute, object to, compromise, settle and withdraw objections to General Unsecured Claims, as appropriate;

3.1.10. establish, adjust, and maintain reserves for Disputed General Unsecured Claims required to be administered by the GUC Trust;

3.1.11. calculate and make Distributions in accordance with the Plan and this GUC Trust Agreement to Allowed General Unsecured Claims;

3.1.12. employ and compensate professionals to represent the GUC Trust with respect to the GUC Trust's responsibilities;

3.1.13. open and otherwise maintain bank and other deposit accounts as necessary in the name of the GUC Trust;

3.1.14. cause the GUC Trust to make all tax withholdings, file tax information returns, file and prosecute tax refund claims, make tax elections by and on behalf of the GUC Trust, and file tax returns for the GUC Trust as a grantor trust under section 671 of the IRC and Treasury Regulations section 1.671-4(a) pursuant to and in accordance with the Plan and this GUC Trust Agreement (subject to the treatment of any portion of the GUC Trust allocable to Disputed Claims, if any, as one or more "disputed ownership funds" governed by Treasury Regulations Section 1.468B-9), and pay taxes, if any, payable for and on behalf of the GUC Trust; provided, however, neither the GUC Trust nor the GUC Trustee shall have any responsibility in any capacity whatsoever for the preparation, filing, signing or accuracy of the Debtors' or the Post-Effective Date Debtors' tax returns that are due to be filed after the Effective Date or for any tax liability related thereto, which shall be the sole responsibility of the Post-Effective Date Debtors;

3.1.15. exercise such other powers as may be vested in the GUC Trust by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the GUC Trust to be necessary and proper to implement the provisions of the Plan as it pertains to General Unsecured Claims, the GUC Trust Assets, and the Holders of Allowed General Unsecured Claims.

3.2 Agents and Professionals. The GUC Trust, acting by and through the GUC Trustee may, but shall not be required to, consult with and retain attorneys, accountants, real estate brokers, appraisers, valuation counselors, transfer agents, a third-party disbursing agent, independent contractors, or other parties deemed by the GUC Trust to have qualifications necessary to assist in the proper administration of the GUC Trust. The GUC Trust may pay the reasonable salaries, fees, and expenses of such persons (including the GUC Trustee), including contingency fees, out of the GUC Trust Assets and without further order of the Bankruptcy Court.

3.3 Investment and Safekeeping of GUC Trust Assets. All GUC Trust Assets received by the GUC Trust shall, until distributed or paid as provided in this GUC Trust Agreement or the Plan, be held in the GUC Trust for the benefit of the Holders of Allowed General Unsecured Claims. The GUC Trust shall be under no obligation to generate or produce, or have any liability for, interest or other income on any monies received by the GUC Trust and held for distribution or payment to the Holders of Allowed General Unsecured Claims, except as such interest or income shall be actually received by the GUC Trust. Investments of any monies held by the GUC Trust shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the GUC Trust to invest monies held by the GUC Trust, or any income earned by the GUC Trust shall be limited to the right and power to invest such monies, pending periodic distributions in accordance with the terms hereof and the Plan. For the avoidance of doubt, the investment powers of the GUC Trust in this GUC Trust Agreement, other than those reasonably necessary to maintain the value of the GUC Trust Assets and the liquidation purpose of the GUC Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposits, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills, and in all cases limited

only to those investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d).

3.4 Limitations on GUC Trust. On behalf of the GUC Trust or the Holders of Allowed General Unsecured Claims, the GUC Trustee shall not at any time: (i) enter into or engage in any trade or business (other than the management and disposition of the GUC Trust Assets), and no part of the GUC Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the GUC Trust in furtherance of any trade or business, (ii) except as provided in section 3.3 hereof and below, reinvest any GUC Trust Assets, or (iii) take any action that would jeopardize treatment of the GUC Trust as a “liquidating trust” for U.S. federal income tax purposes.

3.4.1. Other than as contemplated by the Plan or this GUC Trust Agreement, the GUC Trust is not empowered to incur indebtedness.

3.4.2. The GUC Trust, acting by and through the GUC Trustee, may invest the Cash of the GUC Trust, including any earnings thereon or proceeds therefrom, any Cash realized from the liquidation of the GUC Trust Assets, or any Cash that is remitted to the GUC Trust from any other Person, which investments, for the avoidance of doubt, will not be required to comply with Bankruptcy Code Section 345(b); provided, however, that such investments must be investments that are permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d), as reflected therein, or under applicable guidelines, rulings, or other controlling authorities. The GUC Trust, and by extension the GUC Trustee, shall have no liability in the event of the insolvency or failure of any institution in which he or she has invested any funds of the GUC Trust.

3.4.3. The GUC Trust shall hold, collect, conserve, protect and administer the GUC Trust Assets in accordance with the provisions of this GUC Trust Agreement and the Plan, and pay and distribute amounts as set forth herein for the purposes set forth in this GUC Trust Agreement. Any determination by the GUC Trust, acting by and through the GUC Trustee, as to what actions are in the best interest of the GUC Trust shall be made in accordance with the GUC Trustee’s fiduciary duty to act in the best interest of the Holders of Allowed General Unsecured Claims and shall be determinative.

3.5 Bankruptcy Court Approval of GUC Trust Actions. Except as provided in the Plan or otherwise specified in this GUC Trust Agreement, the GUC Trust, acting by and through the GUC Trustee, need not obtain the order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as otherwise provided herein, the GUC Trust shall exercise its business judgment for the benefit of the Holders of Allowed General Unsecured Claims in order to maximize the value of the GUC Trust Net Assets and distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the GUC Trust shall have the right to submit to the Bankruptcy Court any question or questions regarding which the GUC Trust may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the GUC Trust with respect to any of the GUC Trust Assets, this GUC Trust Agreement, or the Plan, including the administration or distribution of any of the GUC Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and shall approve or disapprove any such proposed action upon motion by the GUC Trust.

3.6 Reliance by GUC Trustee:

- (a) The GUC Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties;
- (b) The GUC Trustee may consult with any and all of the GUC Trust's professionals and the GUC Trustee shall not be liable for any action taken or omitted to be taken by the GUC Trustee in accordance with the advice of such professionals; and
- (c) Persons dealing with the GUC Trustee shall look only to the GUC Trust Assets to satisfy any liability incurred by the GUC Trustee to such Person in carrying out the terms of this GUC Trust Agreement, and the GUC Trustee shall not have any personal obligation to satisfy any such liability.

3.7 Valuation of GUC Trust Assets. The GUC Trust shall apprise the Holders of Allowed General Unsecured Claims of the value of the GUC Trust Assets. The Debtors, the Holders of Allowed General Unsecured Claims, and the GUC Trustee will consistently report the valuation of the assets transferred to the GUC Trust. Such consistent valuations and revised reporting will be used for all U.S. federal, state, local, and other applicable income tax purposes. Income, deductions, gain, or loss from the GUC Trust shall be reported to the beneficiaries of the GUC Trust (the "Beneficiaries") in conjunction with the filing of the GUC Trust's income tax returns. Each Beneficiary shall report income, deductions, gain, or loss on such Beneficiary's income tax returns. Any dispute regarding the valuation of GUC Trust Assets shall be resolved by the Bankruptcy Court.

**ARTICLE IV
DISTRIBUTIONS FROM THE GUC TRUST**

4.1 Distributions. After the Effective Date, as and to the extent required by the Plan, the GUC Trust shall make distributions from the GUC Trust Net Assets in accordance herewith to Holders of Allowed General Unsecured Claims in respect of their interests in the GUC Trust.

4.2 Provisions Governing Distributions. All distributions to be made under this GUC Trust Agreement shall be made in accordance with the Plan.

4.3 Timing of Distributions. Any payment or other distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day, but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail for the entitled recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

4.4 Payments Limited to GUC Trust Net Assets. All payments to be made by the GUC Trust to or for the benefit of any Allowed General Unsecured Claims shall be made only to the

extent that the GUC Trust has sufficient funds or reserves to make such payments in accordance with this GUC Trust Agreement and the Plan. Each Holder of an Allowed General Unsecured Claim shall have recourse only to the GUC Trust Net Assets for distributions under this GUC Trust Agreement and the Plan.

4.5 Fees and Expenses.

4.5.1. From and after the Effective Date, the GUC Trust is authorized to pay all GUC Trust Fees and Expenses from GUC Trust Assets. The Debtors, the Post-Effective Date Debtors, or any of their Affiliates (or anyone acting on their behalf) shall not be responsible for any costs, fees, or expenses of the GUC Trust.

4.6 Priority of Distributions. Any recovery by the GUC Trust on account of the GUC Trust Assets shall be applied in accordance with the Plan; provided, however, that the GUC Trust must pay or reserve for all GUC Trust Fees and Expenses before making distributions to Holders of Allowed General Unsecured Claims.

4.7 Compliance with Laws. Any and all distributions of GUC Trust Assets shall be in compliance with applicable laws except as may be expressly provided herein or in the Plan. Without limiting the generality of the foregoing, (a) the GUC Trust, acting by and through the GUC Trustee, shall make distributions from the GUC Trust to the Holders of Allowed General Unsecured Claims at least annually, to the extent it determines the GUC Trust has sufficient cash available for distribution from all net cash income and all other cash received by the GUC Trust; provided, however, that the GUC Trust may, solely to the extent permitted by applicable law as to liquidating trusts (*e.g.*, Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684), retain such amounts (i) as are reasonably necessary to meet contingent liabilities (including Disputed Claims), and to maintain the value of the Trust Assets during the term of the GUC Trust, (ii) to pay GUC Trust Fees and Expenses, and (iii) to satisfy all other liabilities incurred or assumed by the GUC Trust (or to which the GUC Trust Assets are otherwise subject) in accordance with the Plan and this GUC Trust Agreement and (b) the GUC Trust, acting by and through the GUC Trustee, in its discretion, may cause the GUC Trust to withhold and / or pay to the appropriate tax authority from amounts distributable from the GUC Trust to any Holder of an Allowed General Unsecured Claim any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Holder or the GUC Trust with respect to the amount to be distributed to such Holder. The GUC Trust shall determine such maximum amount to be withheld by the GUC Trust in its sole, reasonable discretion and shall cause the GUC Trust to distribute to the Holder any excess amount withheld. All such amounts withheld and paid to the appropriate tax authority (or reserved pending resolution of the need to withhold) shall be treated as amounts distributed to such Holders of Claims for all purposes of this GUC Trust Agreement.

4.8 Setoff Rights. The GUC Trust, acting by and through the GUC Trustee and its applicable professionals, may, but shall not be required to, setoff against or recoup from the Holder of any Allowed General Unsecured Claim on which payments or other distributions are to be made hereunder, claims or defenses of any nature that the GUC Trust may have in connection with such claims. However, neither the failure to do so, nor the allowance of any Claim under the Plan or

otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the holder of such Allowed Claim.

4.9 Right to Object to Claims in Class 4. The GUC Trust shall have the exclusive responsibility and authority for administering, disputing, compromising and settling or otherwise resolving and finalizing payments or other distributions with respect to Holders of Allowed General Unsecured Claims that are Holders under the Plan, all without Bankruptcy Court approval, and may object to any such Claim until the later of one-hundred eighty (180) days following the Effective Date or such later date as may be approved by the Bankruptcy Court. The GUC Trust at any time may move the Bankruptcy Court for an extension of such Claim objection deadline. The GUC Trust shall generally prosecute objections to General Unsecured Claims pending as of the Effective Date and any additional objections it determines to file from and after the Effective Date but shall be entitled to exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any General Unsecured Claims. In addition, subject to the foregoing sentence, the GUC Trust may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim in Class 4 pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

4.10 No Distributions Pending Allowance. If a Claim or any portion of a Claim is Disputed, no payment or distribution shall be made on account of any portion of such Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Plan or this GUC Trust Agreement.

4.11 Minimum Distributions. The GUC Trustee shall not make any distributions to a Holder of an Allowed General Unsecured Claim or Allowed Interest on account of such Allowed General Unsecured Claim or Allowed Interest of Cash or otherwise where such distribution is valued, in the reasonable discretion of the GUC Trustee, at less than \$100. Each Allowed General Unsecured Claim or Allowed Interest to which this limitation applies shall be discharged pursuant to the Plan, and its Holder shall be forever barred pursuant to the Plan from asserting that Claim or Interest against the GUC Trust, the Purchaser, or the Post-Effective Date Debtors or their property.

4.12 Dissolution of GUC Trust. Upon dissolution of the GUC Trust, any remaining GUC Trust Assets shall be distributed to GUC Trust Beneficiaries in accordance with the Plan and this GUC Trust Agreement as appropriate; provided, however, that if the GUC Trustee reasonably determines that such remaining GUC Trust Assets are insufficient to render a further distribution practicable, the GUC Trustee may (i) reserve any amount necessary to dissolve the GUC Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the Tax Code, (B) exempt from U.S. federal income tax under section 501(a) of the Tax Code, (C) not a “private foundation” as defined in section 509(a) of the Tax Code, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the GUC Trust, and any insider or affiliate of the GUC Trustee, and (iii) dissolve the GUC Trust.

ARTICLE V
HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS

5.1 Identification and Addresses of Holders of Allowed General Unsecured Claims. In order to determine the actual names and addresses of Holders of Allowed General Unsecured Claims, the GUC Trust, acting by and through the GUC Trustee, may deliver a notice to such Holders. Such notice may include a form for each Holder to complete in order to be properly registered as a Holder and be eligible for distributions under the GUC Trust. Such form may request the Holder's U.S. federal taxpayer identification number or social security number if the GUC Trust determines that such information is necessary to fulfill the GUC Trust's tax reporting and withholding obligations. A Holder may, after the Effective Date, select an alternative mailing address by notifying the GUC Trustee in writing of such alternative distribution address. Absent receipt of such notice, the GUC Trust shall not be obligated to recognize any such change of address. Such notification shall be effective only upon receipt by the GUC Trust. The GUC Trust, in its reasonable discretion, may suspend distributions to any Holder that has not provided its U.S. federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 5.1. If tax information is not provided within ninety (90) days after an initial request, the applicable Holder's underlying claim will be expunged and its interest in the GUC Trust disallowed for all purposes of this GUC Trust Agreement to the extent provided under the Plan. Each Holder's interest in the GUC Trust is dependent upon such Holder's classification under the Plan and the status of its Allowed Claim.

5.2 Beneficial Interest Only. A Holder's interest in the GUC Trust shall not entitle any Holder to any title in or to, possession of, management of or control of any of the GUC Trust Assets or to any right to call for a partition or division of such GUC Trust Assets or to require an accounting, except as specifically provided herein. Except as expressly provided in this GUC Trust Agreement, a Holder shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Trust Assets.

5.3 Ownership of Beneficial Interests Hereunder. Each Holder of an Allowed General Unsecured Claim shall own a beneficial interest in the GUC Trust (as represented by the GUC Trust Interest(s) issued to such Holder consistent with the Plan). The record holders of the GUC Trust Interests shall be recorded and set forth in a registry maintained by, or at the direction of, the GUC Trustee expressly for such purpose.

5.4 Evidence of Beneficial Interest.

5.4.1. Ownership of a GUC Trust Interest shall not be evidenced by any certificate, security, or receipt (unless otherwise determined by the GUC Trust, acting by and through the GUC Trustee) or in any other form or manner whatsoever. Ownership of the GUC Trust Interests shall be maintained on books and records of the GUC Trust maintained by the GUC Trustee, which may be the official claims register maintained in the Chapter 11 Cases. The GUC Trust shall, upon the written request of a Holder of a beneficial interest, provide reasonably adequate documentary evidence of such Holder's Claim, as indicated on the books and records of the GUC Trust. The expense of providing such documentation shall be borne by the requesting Holder.

5.5 No Right to Accounting. Except as set forth in sections 7.4 and 7.9 of this GUC Trust Agreement, neither the Holders of a GUC Trust Interest nor their successors, assigns, creditors, or any other Person shall have any right to an accounting by the GUC Trust, and the GUC Trust shall not be obligated to provide any accounting to any Person. Nothing in this GUC Trust Agreement is intended to require the GUC Trust at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the GUC Trust or as a condition for making any advance, payment, or distribution out of proceeds of GUC Trust Assets.

5.6 No Standing. Except as expressly provided in this GUC Trust Agreement, if at all, a Holder of a General Unsecured Claims shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Trust Assets.

5.7 Requirement of Undertaking. The GUC Trust may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this GUC Trust Agreement, or in any suit against the GUC Trustee for any action taken or omitted by it as GUC Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; provided, however, that the provisions of this section 5.7 shall not apply to any suit by the GUC Trustee.

5.8 Limitation on Transferability. It is understood and agreed that the GUC Trust Interests shall be non-transferable and non-assignable during the term of this GUC Trust Agreement other than if transferred by will, intestate succession, or otherwise by operation of law. Any such Transfer by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the GUC Trust by and through the GUC Trustee, and the GUC Trustee may continue to cause the GUC Trust to pay all amounts to or for the benefit of the assigning Holders of Allowed General Unsecured Claims until receipt of proper notification and proof of such Transfer. The GUC Trust may rely upon such proof without the requirement of any further investigation. Notwithstanding any other provision to the contrary, the GUC Trust may disregard any purported Transfer of Claims by will, intestate succession or operation of law if sufficient necessary information (as reasonably determined by the GUC Trustee), including applicable tax-related information, is not provided by such purported transferee or assignee to the GUC Trust.

5.9 Exemption from Registration. The parties hereto intend that the rights of the Holders of Allowed General Unsecured Claims arising under this GUC Trust Agreement shall not be "securities" under applicable laws, but none of the parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities law. If such rights constitute securities, the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws shall apply to their issuance under the Plan. No party to this GUC Trust Agreement shall make a contrary or different contention.

ARTICLE VI THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Parties Dealing With the GUC Trust and GUC Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the GUC Trust or the GUC Trustee shall be entitled to rely on the authority of the GUC Trustee or any of the GUC Trustee's agents to act in

connection with the GUC Trust Agreement. No Person that may deal with the GUC Trustee shall have any obligation to inquire into the validity or expediency or propriety of any transaction by the GUC Trustee or any agent of the GUC Trustee.

6.2 Limitation of GUC Trustee's Liability. Anything herein to the contrary notwithstanding, in exercising the rights granted herein, the GUC Trustee shall exercise its best judgment, to the end that the affairs of the GUC Trust shall be properly managed and the interests of all the Holders of Allowed General Unsecured Claims are safeguarded; but the GUC Trustee shall not incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this GUC Trust Agreement, unless the GUC Trustee has acted with gross negligence, fraud or willful misconduct. The GUC Trustee's obligations, duties, liabilities, and responsibilities under the Plan, the Confirmation Order and this GUC Trust Agreement are qualified in their entirety by the availability of and reasonable likelihood of recovery of sufficient assets or Cash to fund the GUC Trust's activities. Upon the appointment of a successor GUC Trustee and the delivery of the then remaining GUC Trust Assets to the successor GUC Trustee, the predecessor GUC Trustee and any of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer, and successors shall have no further liability or responsibility with respect thereto (other than liabilities arising prior to the cessation of its role as GUC Trustee). A successor GUC Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor, and no successor GUC Trustee shall be in any way liable for the acts or omissions of any predecessor GUC Trustee, unless a successor GUC Trustee expressly assumes such responsibility. A predecessor GUC Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor GUC Trustee for any events or occurrences subsequent to the cessation of its role as GUC Trustee.

6.3 Indemnification. The GUC Trustee and each of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, independent contractors, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer and successors (each, an "Indemnified Party") shall be indemnified for, and defended and held harmless against, by the GUC Trust and solely from the GUC Trust Assets, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred without gross negligence, willful misconduct, or fraud on the part of the applicable Indemnified Party (which gross negligence, willful misconduct, or fraud, if any, must be determined by a final, non-appealable order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or this GUC Trust Agreement, as applicable if the applicable Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the GUC Trust or the Beneficiaries. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, willful misconduct, or fraud. The amounts necessary for the indemnification provided in this Section 6.3 (including, but not limited to, any costs and expenses incurred in enforcing the right of indemnification in this Section 6.3) shall be paid by the GUC Trustee out of the GUC Trust Assets. The GUC Trustee shall not be personally liable for the payment of any GUC

Trust Fees and Expenses or claim or other liability of the GUC Trust, and no Person shall look to the GUC Trustee personally for the payment of any such expense or liability. The indemnification provided in this Section 6.3 shall survive the death, dissolution, incapacity, resignation or removal of the GUC Trustee, Indemnified Party or the termination of the GUC Trust, and shall inure to the benefit of each Indemnified Party's heirs and assigns.

ARTICLE VII SELECTION, REMOVAL AND COMPENSATION OF GUC TRUSTEE

7.1 Appointment. The GUC Trustee has been selected pursuant to the provisions of the Plan. To effectuate an orderly and efficient transition of the administration, in accordance herewith, of the GUC Trust Assets for the benefit of the Holders of Allowed General Unsecured Claims.

7.2 Term of Service. The GUC Trustee shall serve until the earlier to occur of (a) the termination of the GUC Trust in accordance with this GUC Trust Agreement and the Plan or (b) the GUC Trustee's death, dissolution, incapacity, resignation or removal.

7.3 Removal of a GUC Trustee. Any Person serving as GUC Trustee may be removed and replaced by an order of the Bankruptcy Court and a showing of good cause. The removal shall be effective on the date specified in the order of the Bankruptcy Court. Notwithstanding the removal of the GUC Trustee pursuant to this Section 7.3, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.4 Resignation of GUC Trustee. The GUC Trustee may resign at any time by giving prior written notice of its intention to do so to its counsel and to the Post-Effective Date Debtors, which notice shall be at least thirty (30) days unless the resignation is due to a disability or other incapacity. Without limiting any other reporting or accounting obligations under the Plan or this GUC Trust Agreement, in the event of a resignation, the resigning GUC Trustee shall file with the Bankruptcy Court a full and complete written accounting of monies and GUC Trust Assets received, disbursed, and held during the term of office of that GUC Trustee. The resignation shall be effective on the later to occur of: (a) the date specified in the notice; or (b) the appointment of a successor made in accordance with Section 7.5; provided, that such resignation shall become effective, at the GUC Trustee's discretion, on the date specified in the GUC Trustee's notice without the appointment of a successor GUC Trustee if the Insurance Coverages (as defined below) terminate for any reason other than the GUC Trustee's unreasonable refusal to renew such Insurance Coverages, and provided further that if a successor GUC Trustee is not appointed or does not accept its appointment or if the appointment of a successor GUC Trustee has not been approved by the Bankruptcy Court within sixty (60) days following delivery of notice of resignation, the resigning GUC Trustee may petition the Bankruptcy Court for the appointment of a successor GUC Trustee. Notwithstanding the resignation of the GUC Trustee pursuant to this Section 7.4, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.5 Appointment of Successor GUC Trustee. Upon the resignation, death, dissolution, incapacity or removal of a GUC Trustee, counsel to the GUC Trustee at the time of such resignation, death, dissolution, incapacity or removal of such GUC Trustee shall file a motion with the Bankruptcy Court seeking to appoint a successor GUC Trustee to fill the vacancy so created, so long as any of the Chapter 11 Cases are pending, or file a notice of appointment of such successor GUC Trustee on the docket of the Chapter 11 Cases, if the Chapter 11 Cases are not pending. Any successor GUC Trustee so appointed pursuant to this Section 7.5 shall consent to and accept in writing the terms of this GUC Trust Agreement and agrees that the provisions of this GUC Trust Agreement shall be binding upon and inure to the benefit of the successor GUC Trustee.

7.6 Powers and Duties of Successor GUC Trustee. A successor GUC Trustee shall have all the rights, privileges, powers, and duties of his, her or its predecessor under this GUC Trust Agreement and the Plan. Notwithstanding anything to the contrary herein, a removed or resigning GUC Trustee shall, when requested in writing by the successor GUC Trustee, execute and deliver an instrument or, instruments conveying and transferring to such successor GUC Trustee under the GUC Trust all the estates, properties, rights, powers, and trusts of such predecessor GUC Trustee.

7.7 Trust Continuance. The death, resignation, dissolution, incapacity or removal of the GUC Trustee shall not terminate the GUC Trust or revoke any then-existing agency created pursuant to this GUC Trust Agreement or invalidate any action theretofore taken by the GUC Trustee.

7.8 Compensation and Costs of Administration. The GUC Trustee shall receive fair and reasonable compensation for its services as determined by GUC Trust Agreement between the GUC Trustee and the Creditors' Committee either on an hourly basis at the GUC Trustee's standard hourly billing rates or a flat monthly fee, plus all reasonable and documented costs and expenses, which shall be charged against and paid out of the GUC Trust Assets without further Bankruptcy Court approval or order. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the GUC Trustee (or professionals who may be employed by the GUC Trustee in administering the GUC Trust, in carrying out their responsibilities under this GUC Trust Agreement, or in any manner connected, incidental, or related thereto) shall be paid from the applicable GUC Trust Assets prior to any distribution to the Holders of Allowed General Unsecured Claims without further Bankruptcy Court approval or order (subject to the limitations set forth in this GUC Trust Agreement and the Plan).

7.9 Periodic Reporting; Filing Requirements.

7.9.1. The GUC Trustee shall provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning GUC Trust administration.

7.9.2. The GUC Trustee shall file tax returns for the GUC Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and any other applicable laws or regulations with the Holders of Allowed General Unsecured Claims treated as the grantors of the GUC Trust for U.S. federal income tax purposes in respect of their GUC Trust Interests. In addition, the GUC Trustee shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The GUC Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the GUC Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

7.9.3. The tax returns filed by the GUC Trustee shall report all GUC Trust earnings for the taxable year being reported. The “taxable year” of the GUC Trust shall be the “calendar year” as those terms are defined in Section 441 of the IRC.

7.10 Confidentiality. Except as required in the performance of its duties, the GUC Trustee shall, while serving as GUC Trustee under this GUC Trust Agreement, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the GUC Trust Assets relate or of which he has become aware in its capacity as GUC Trustee.

ARTICLE VIII MAINTENANCE OF RECORDS

8.1 The GUC Trustee shall maintain accurate records of the administration of GUC Trust Assets, including receipts and disbursements and other activity of the GUC Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the GUC Trust, if applicable. To the extent of any General Unsecured Claims reflected thereon, the Claims register may serve as the GUC Trustee’s register of beneficial interests held by Holders of Claims. The books and records maintained by the GUC Trustee and any records of the Debtors transferred to the GUC Trust may be disposed of by the GUC Trustee at the later of (i) such time as the GUC Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the GUC Trust or Holders of Claims and (ii) upon the termination and completion of the winding down of the GUC Trust.

ARTICLE IX DURATION OF GUC TRUST

9.1 Duration. This GUC Trust Agreement shall remain and continue in full force and effect until the GUC Trust is terminated in accordance with the provisions of this GUC Trust Agreement and the Plan.

9.2 Termination of the GUC Trust. The GUC Trustee and the GUC Trust shall be discharged or terminated, as the case may be, at such time as: (a) all distributions required to be made by the GUC Trustee to the Holders of Allowed General Unsecured Claims have been made, but in no event shall the GUC Trust be terminated later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six (6) months before the end of the preceding extension), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the GUC Trust Assets. The GUC Trust may not be terminated at any time by the Holders of Claims. In connection with the termination of the GUC Trust, notwithstanding other provisions hereof, including section 3.1, any remaining GUC Trust Assets that the GUC Trustee determines, in its sole discretion, are of inconsequential value or

otherwise insufficient to support the cost of a distribution, may be transferred by the GUC Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the IRC.

9.3 Continuance of GUC Trust for Winding Up. After the termination of the GUC Trust and for the purpose of liquidation and winding up the affairs of the GUC Trust, the GUC Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the GUC Trust. Subject to the provisions of Section 8.1 hereof, after the termination of the GUC Trust, the GUC Trustee, for a time, may retain or cause to be retained certain books, records, lists of Holders, and certificates and other documents and files that shall have been delivered to or created by the GUC Trustee. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the GUC Trust and final distribution of the GUC Trust, the GUC Trustee shall have no further duties or obligations hereunder.

ARTICLE X MISCELLANEOUS

10.1 Books and Records. The GUC Trustee shall be provided with reasonable access, during normal business hours, to the Debtors' or the Post-Effective Date Debtors' (as applicable) personnel and books and records upon request in order to allow the GUC Trustee to discharge its duties in reconciling and prosecuting objections to General Unsecured Claims.

10.2 Preservation of Privilege. In connection with the rights and claims that constitute GUC Trust Assets, any attorney-client privilege, work-product doctrine, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the GUC Trust pursuant to the terms of the Plan or otherwise shall vest in the GUC Trustee and his representatives, and the GUC Trustee is authorized to take all necessary actions to effectuate the transfer of such privileges, as necessary. The GUC Trustee's receipt of such privileges shall not operate as a waiver of any other privileges or immunities possessed or retained by the Debtors or Post-Effective Date Debtors (as applicable).

10.3 Notices. Unless otherwise expressly provided herein, all notices to be given to Holders of Claims may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by the GUC Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the GUC Trust shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery (if receipt is confirmed) addressed as follows:

If to the GUC Trust: Cyxtera GUC Trust
c/o META Advisors LLC
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Attn: James S. Carr
Dana P. Kane

With a copy to: Pachulski Stang Ziehl & Jones LLP
Bradford J. Sandler and Paul J. Labov
780 Third Avenue, 34th Floor
New York, NY 10017
bsandler@pszjlaw.com
plabov@pszjlaw.com

or to such other address as may from time to time be provided in written notice by the GUC Trustee.

10.4 No Bond / Insurance. Notwithstanding any state law to the contrary, the GUC Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction, unless the GUC Trustee decides in its reasonable judgment to obtain such bond or other security. The GUC Trustee is hereby authorized, but not required to obtain all reasonable insurance coverage for itself, its agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the GUC Trustee and its agents, representatives, employees or independent contractors under this GUC Trust Agreement and the Plan (“Insurance Coverages”). The cost of any such Insurance Coverage shall be a GUC Trust Fee and Expense and paid out of the GUC Trust Assets.

10.5 Governing Law. This GUC Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (excluding conflict of laws rules), including all matters of validity, construction and administration; provided, however, that there shall not be applicable to the GUC Trust, the GUC Trustee or this GUC Trust Agreement, (a) the provisions of Section 3540 of Title 12 of the Delaware Code and (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof, (i) the filing with any court or governmental body or agency of trustee accounts or schedule of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents or employees of a trust, (v) the allocation of receipts and expenditures to income and principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees.

10.6 Successors and Assigns. This GUC Trust Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

10.7 Headings. The various headings of this GUC Trust Agreement are inserted for convenience only and shall not affect the meaning or understanding of this GUC Trust Agreement or any provision hereof.

10.8 Cumulative Rights and Remedies. The rights and remedies provided in this GUC Trust Agreement are cumulative and not exclusive of any rights and remedies under law or in equity.

10.9 No Execution. All funds in the GUC Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Holder of an Allowed General Unsecured Claim, and no such Holder or any other Person can execute upon, garnish or attach the GUC Trust Assets or the GUC Trust in any manner or compel payment from the GUC Trust except by Final Order of the Bankruptcy Court. Payment will be solely governed by this GUC Trust Agreement and the Plan.

10.10 Intention of Parties to Establish Grantor Trust. This GUC Trust Agreement is intended to create a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust. Consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684, the GUC Trust shall be treated as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the IRC. As such, for U.S. federal income tax purposes, the Holders of Allowed General Unsecured Claims will be treated as both the grantors and the deemed owners of the GUC Trust.

10.11 Tax Treatment of Reserves for Disputed Claims. The GUC Trustee shall maintain reserves for Disputed Claims as provided in the Plan or otherwise in the GUC Trustee's sole discretion. The GUC Trustee may, in the GUC Trustee's sole discretion, determine the best way to report for tax purposes with respect to any reserve for any Disputed Claims of Holders of Allowed General Unsecured Claims, including, but not limited to, (i) filing a tax election to treat any and all reserves for Disputed Claims as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Regulations Section 1.468B-9 for U.S. federal income tax purposes rather than to tax such reserve as a part of the GUC Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report any reserve for Disputed Claims as a DOF, the GUC Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due. For the avoidance of doubt, all of the GUC Trust's income shall be treated as subject to tax on a current basis consistent with Revenue Procedure 82-58, 1982-2, C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684.

10.12 Amendment. The GUC Trustee may, from time to time, modify, supplement, or amend this GUC Trust Agreement but only to clarify any ambiguity or inconsistency, or render the GUC Trust Agreement in compliance with its stated purposes, and only if such amendment does not materially and adversely affect the interests, rights, treatment, or distributions of any Holder of an Allowed General Unsecured Claim. The GUC Trustee, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this GUC Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

10.13 Waiver. No failure by any Party to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

10.14 Severability. If any term, provision, covenant or restriction contained in this GUC Trust Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this GUC Trust Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.15 Counterparts and Facsimile Signatures. This GUC Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

10.16 Jurisdiction. The Bankruptcy Court shall have jurisdiction regarding the GUC Trust, the GUC Trustee, and the GUC Trust Assets, including the determination of all disputes arising out of or related to administration of the GUC Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters arising out of or related to this GUC Trust Agreement or the administration of the GUC Trust. The parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this GUC Trust Agreement, then the provisions of this GUC Trust Agreement shall have no effect on and shall not control, limit or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this GUC Trust Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this GUC Trust Agreement as of the day and year written above.

DEBTORS:

Cyxtera Technologies, Inc.
Cyxtera Canada TRS, ULC
Cyxtera Canada, LLC
Cyxtera Communications Canada, ULC
Cyxtera Communications, LLC
Cyxtera Data Centers, Inc.
Cyxtera DC Holdings, Inc.
Cyxtera DC Parent Holdings, Inc.
Cyxtera Digital Services, LLC
Cyxtera Employer Services, LLC
Cyxtera Federal Group, Inc.
Cyxtera Holdings, LLC
Cyxtera Management, Inc.
Cyxtera Netherlands B.V.
Cyxtera Technologies Maryland, Inc.
Cyxtera Technologies, LLC

By: _____

Name: Victor Semah
Title: Chief Legal Officer

TRUSTEE:

META Advisors LLC, not individually, but solely
in its capacity as GUC Trustee of the GUC Trust

By: _____

Name: James S. Carr
Title: Managing Director

Exhibit Da

Redline to Previously Filed GUC Trust Agreement

CYXTERA TECHNOLOGIES, INC.

GUC TRUST AGREEMENT

This GUC Trust Agreement (as it may be amended, modified, supplemented or restated from time to time, this “GUC Trust Agreement”) dated as of January [●12], 2023, is made and entered into by and among Cyxtera Technologies, Inc., and its affiliated debtors,¹ (each a “Debtor” and collectively, the “Debtors”), and [REDACTED] META Advisors LLC solely in its capacity as GUC Trustee, for the purpose of forming a trust and is executed in connection with and pursuant to the terms of the ~~Third~~Fourth *Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc.,— and ~~its~~Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. ~~6949~~718] (as it may be amended, modified, supplemented or restated from time to time, the “Plan”), which Plan provides for, among other things, the establishment of the GUC Trust evidenced hereby (the “GUC Trust”).

WITNESSETH

WHEREAS, the Chapter 11 Cases were commenced by the Debtors filing by voluntary chapter 11 petitions in the Bankruptcy Court on June 4, 2023;

WHEREAS, the Bankruptcy Court confirmed the Plan by order dated November 17, 2023 (the “Confirmation Order”) [Docket No. ~~718~~718];

WHEREAS, this GUC Trust Agreement is entered into to effectuate the establishment of the GUC Trust as provided for in the Plan and the Confirmation Order;

WHEREAS, the GUC Trust is established for the benefit of the Holders of Class 4 General Unsecured Claims (“General Unsecured Claims”) as set forth in the Plan;

WHEREAS, the GUC Trust is established for the purpose of collecting, holding, administering, distributing and liquidating the GUC Trust Assets (as defined in the Plan) for the benefit of the Holders of Allowed General Unsecured Claims accordance with the terms of this GUC Trust Agreement and the Plan;

WHEREAS, the GUC Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the GUC Trust as set forth in this GUC Trust Agreement, the Confirmation Order, and the Plan;

WHEREAS, holders of Allowed General Unsecured Claims are entitled to their *pro rata* share of the GUC Trust Net Assets (as defined in the Plan);

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ 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.

WHEREAS, the GUC Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulations (hereinafter “Treasury Regulations”) Section 301.7701-4(d) and to be exempt from the requirements of the Investment Company Act of 1940;

WHEREAS, the Debtors, the GUC Trustee, and the Holders of Allowed General Unsecured Claims agree to treat, for all U.S. federal income tax purposes, the transfer of the GUC Trust Assets to the GUC Trust as a deemed transfer of the GUC Trust Assets by the Debtors to the Holders of Allowed General Unsecured Claims on account of their Claims under the Plan, followed by a deemed contribution of the GUC Trust Assets by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for the interests herein, and to treat the Holders of Allowed General Unsecured Claims as the grantors and deemed owners of the GUC Trust in accordance with Treasury Regulations Section 301.7701-4;

WHEREAS, the GUC Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Section 671 of the IRC, *et seq.*, with the Holders of Allowed General Unsecured Claims treated as the grantors of the GUC Trust; and

WHEREAS, the Bankruptcy Court shall have jurisdiction over the GUC Trust, the GUC Trustee, and the GUC Trust Assets as provided herein and in the Plan and Confirmation Order.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Debtors and the Trustee agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. All capitalized terms used in this GUC Trust Agreement not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan. The following capitalized terms have the meanings herein as described below:

1.1.1. “Business Day” shall mean any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

1.1.2. “GUC Trustee” shall mean (x) initially, the Person named in the introductory paragraph to this GUC Trust Agreement as the GUC Trustee, and (y) any successors or replacements duly appointed under the terms of this GUC Trust Agreement.

1.2 Plan Terms Control. In the case of any inconsistency between the terms of this GUC Trust Agreement and the terms of the Plan, the terms of the Plan shall govern and control.

This GUC Trust Agreement shall not be construed to impair or limit in any way the rights of any Person under the Plan.

ARTICLE II ESTABLISHMENT, PURPOSE AND FUNDING OF GUC TRUST

2.1 Creation and Name; Formation

2.1.1. Upon the Effective Date of the Plan, the GUC Trust is hereby created. The GUC Trustee may conduct the affairs of the GUC Trust under the name of the “Cyxtera GUC Trust” or such variation thereof as the GUC Trustee sees fit.

2.2 Purpose of GUC Trust. The Debtors and the GUC Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code, hereby establish the GUC Trust (i) for the purpose of ~~collecting, administering, and~~ distributing ~~and liquidating~~ the GUC Trust Assets, including without limitation, the prosecution and defense of disputed Claims for the benefit of the Holders of Allowed General Unsecured Claims in accordance with the terms of this GUC Trust Agreement, the Plan, and the Confirmation Order, and (ii) to make distributions to the Holders of Allowed General Unsecured Claims, in each case to the extent required by the Plan and Confirmation Order. The Debtors or Post-Effective Date Debtors, and their Related Parties (as applicable), shall have no liability with respect to the distribution or payment of any GUC Trust Assets to any of the Holders of Allowed General Unsecured Claims, except as otherwise provided for in the Plan. The activities of the GUC Trust shall be limited to those activities set forth in this GUC Trust Agreement and as otherwise contemplated by the Plan. The GUC Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and the primary purpose of the GUC Trust shall be to liquidate and distribute the GUC Trust Assets and the GUC Trustee understands and agrees that the GUC Trust has no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the GUC Trust as set forth in the Plan.

2.3 Transfer of GUC Trust Assets.

2.3.1. On or prior to the ~~date of~~ Effective Date, the Debtors shall have transferred to the GUC Trust the GUC Trust Assets. Each Debtor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Holders of Allowed General Unsecured Claims, all of the GUC Trust Assets owned, held, possessed or controlled by such Debtor to the GUC Trustee as of the Effective Date, in trust for the benefit of Holders of Allowed General Unsecured Claims, for the uses and purposes as specified in this GUC Trust Agreement and the Plan, and all such GUC Trust Assets are automatically vested in the GUC Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, except as specifically provided in the Plan. None of the Debtors shall have any further obligations with respect to the Allowed General Unsecured Claims under the Plan or the distribution or payment of any proceeds of the GUC Trust Assets to any of the Holders of Allowed General Unsecured Claims upon the transfer of the GUC Trust Assets to the GUC Trust in accordance with this GUC Trust Agreement and the Plan, except that the Debtors or their successor(s), including without limitation, the Post-Effective Date Debtors, shall, from time to time, execute and deliver or cause

to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Debtors or their successor (i.e., the Post-Effective Date Debtors) shall take or cause to be taken such further action, in each case as the GUC Trustee may reasonably deem necessary or appropriate, to vest or perfect in or confirm to the GUC Trustee title to and possession of the GUC Trust Assets.

2.3.2. For all U.S. federal, state, and local income tax purposes, the Debtors, the Holders of Allowed General Unsecured Claims, and the GUC Trustee shall treat the transfer of the GUC Trust Assets to the GUC Trust as a deemed transfer of the GUC Trust Assets by the Debtors to the Holders of Allowed General Unsecured Claims on account of their Allowed Claims under the Plan, followed by a deemed contribution of the GUC Trust Assets by the Holders of Allowed General Unsecured Claims to the GUC Trust in exchange for their interests in the GUC Trust. Thus, the Holders of Allowed General Unsecured Claims shall be treated as the grantors and deemed owners of the GUC Trust for U.S. federal income tax purposes.

2.3.3. To the extent that any GUC Trust Assets cannot be transferred to the GUC Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such GUC Trust Assets shall be deemed to have been retained by the Debtors or their successor and the GUC Trustee shall be deemed to have been designated as a representative of the Debtors or their successor pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such GUC Trust Assets on the behalf of the Debtors or their successor.

2.4 Nature of Trust. This GUC Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a liquidating trust. The GUC Trust is irrevocable but this GUC Trust Agreement is subject to amendment and waiver as provided in this GUC Trust Agreement. The GUC Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, joint stock company or association, nor shall the GUC Trustee, or the Holders of Allowed General Unsecured Claims, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Holders of Allowed General Unsecured Claims, on the one hand, to the GUC Trust and the GUC Trustee, on the other hand, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this GUC Trust Agreement, the Plan and the Confirmation Order.

2.5 Effectiveness. The effectiveness of this GUC Trust Agreement shall occur upon the Effective Date of the Plan.

2.6 Incorporation of the Plan. The Plan and the Confirmation Order are each hereby incorporated into this GUC Trust Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this GUC Trust Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall

have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this GUC Trust Agreement.

ARTICLE III ADMINISTRATION OF THE GUC TRUST

3.1 Rights, Powers and Privileges. In connection with the administration of the GUC Trust, and on behalf of the GUC Trust, the GUC Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the GUC Trust (including, without limitation, all powers, rights, and duties under applicable law); provided, that the GUC Trustee shall not perform any acts that are inconsistent with this GUC Trust Agreement, the Plan, and/or the Confirmation Order. The GUC Trust, acting by and through the GUC Trustee, ~~as applicable~~, shall have all of the rights and powers granted to the Debtors or Post-Effective Date Debtors in the Plan as it pertains to General Unsecured Claims and Holders of Allowed General Unsecured Claims, including *inter alia*, without limitation Article III and IV of the Plan, such as, by example only, and in addition to any powers and authority specifically set forth in other provisions of the Plan, the power to:

3.1.1. receive, manage, supervise, and protect the GUC Trust Assets;

3.1.2. hold legal title to any and all rights of the holders of GUC Trust Interests in or arising from the GUC Trust Assets, including, without limitation, collecting and receiving any and all money and/or other property belonging to the GUC Trust;

3.1.3. protect and enforce the rights to the GUC Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

3.1.4. establish and maintain a website for the purpose of providing notice of GUC Trust activities in lieu of sending written notice to holders of GUC Trust Interests, subject to providing notice of such website to such holders;

3.1.5. take or refrain from taking any and all other actions that the GUC Trustee reasonably deems necessary or convenient for the continuation, protection, and maximization of GUC Trust Assets, the protection of interests holders of GUC Trust Interests or to carry out the purposes provided herein;

3.1.6. effect all actions and execute all agreements, instruments and other documents necessary to reconcile and resolve General Unsecured Claims, including without limitation, the right to prosecute setoff, recoupment and any and all other rights in connection with General Unsecured Claims;

3.1.7. establish, as necessary, disbursement accounts for the deposit and distribution of all amounts to be distributed under the Plan to Holders of Allowed General Unsecured Claims;

3.1.8. in reliance upon the Debtors' schedules and the official Claims register maintained in the Chapter 11 Cases, maintain a register evidencing the interest herein held by

each Holder of a General Unsecured Claim and, in accordance with section 8.1 of this GUC Trust Agreement;

3.1.9. review, reconcile, allow, prosecute, object to, compromise, settle and withdraw objections to General Unsecured Claims, as appropriate;

3.1.10. establish, adjust, and maintain reserves for Disputed General Unsecured Claims required to be administered by the GUC Trust;

3.1.11. calculate and make Distributions in accordance with the Plan and this GUC Trust Agreement to Allowed General Unsecured Claims;

3.1.12. employ and compensate professionals to represent the GUC Trustee with respect to the GUC Trustee's responsibilities;

3.1.13. open and otherwise maintain bank and other deposit accounts as necessary in the name of the GUC Trust;

3.1.14. ~~3.1.13.~~ cause the GUC Trust to make all tax withholdings, file tax information returns, file and prosecute tax refund claims, make tax elections by and on behalf of the GUC Trust, and file tax returns for the GUC Trust as a grantor trust under section 671 of the IRC and Treasury Regulations section 1.671-4(a) pursuant to and in accordance with the Plan and this GUC Trust Agreement (subject to the treatment of any portion of the GUC Trust allocable to Disputed Claims, if any, as one or more "disputed ownership funds" governed by Treasury Regulations Section 1.468B-9), and pay taxes, if any, payable for and on behalf of the GUC Trust; provided, however, neither the GUC Trust nor the GUC Trustee shall have any responsibility in any capacity whatsoever for the preparation, filing, signing or accuracy of the Debtors' or the Post-Effective Date Debtors' tax returns that are due to be filed after the Effective Date or for any tax liability related thereto, which shall be the sole responsibility of the Post-Effective Date Debtors;

3.1.15. ~~3.1.14.~~ exercise such other powers as may be vested in the GUC Trustee by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan as it pertains to General Unsecured Claims, the GUC Trust Assets, and the Holders of Allowed General Unsecured Claims.

3.2 Agents and Professionals. The GUC Trust, acting by and through the GUC Trustee may, but shall not be required to, consult with and retain attorneys, accountants, real estate brokers, appraisers, valuation counselors, transfer agents, a third-party disbursing agent, independent contractors, or other parties deemed by the GUC Trustee to have qualifications necessary to assist in the proper administration of the GUC Trust. The GUC Trustee may pay the reasonable salaries, fees, and expenses of such persons (including ~~itself~~ the GUC Trustee), including contingency fees, out of the GUC Trust Assets and without further order of the Bankruptcy Court.

3.3 Investment and Safekeeping of GUC Trust Assets. All GUC Trust Assets received by the GUC Trustee shall, until distributed or paid as provided in this GUC Trust Agreement or the Plan, be held in the GUC Trust for the benefit of the Holders of Allowed

General Unsecured Claims. The GUC Trustee shall be under no obligation to generate or produce, or have any liability for, interest or other income on any monies received by the GUC Trust and held for distribution or payment to the Holders of Allowed General Unsecured Claims, except as such interest or income shall be actually received by the GUC Trustee. Investments of any monies held by the GUC Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the GUC Trustee to invest monies held by the GUC Trustee, or any income earned by the GUC Trust shall be limited to the right and power to invest such monies, pending periodic distributions in accordance with the terms hereof and the Plan. For the avoidance of doubt, the investment powers of the GUC Trustee in this GUC Trust Agreement, other than those reasonably necessary to maintain the value of the GUC Trust Assets and the liquidation purpose of the GUC Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposits, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills, and in all cases limited only to those investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d).

3.4 Limitations on GUC Trustee. On behalf of the GUC Trust or the Holders of Allowed General Unsecured Claims, the GUC Trustee shall not at any time: (i) enter into or engage in any trade or business (other than the management and disposition of the GUC Trust Assets), and no part of the GUC Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the GUC Trust in furtherance of any trade or business, (ii) except as provided in section 3.3 hereof and below, reinvest any GUC Trust Assets, or (iii) take any action that would jeopardize treatment of the GUC Trust as a “liquidating trust” for U.S. federal income tax purposes.

3.4.1. Other than as contemplated by the Plan or this GUC Trust Agreement, the GUC Trustee is not empowered to incur indebtedness.

3.4.2. The GUC Trust, acting by and through the GUC Trustee, may invest the Cash of the GUC Trust, including any earnings thereon or proceeds therefrom, any Cash realized from the liquidation of the GUC Trust Assets, or any Cash that is remitted to the GUC Trust from any other Person, which investments, for the avoidance of doubt, will not be required to comply with Bankruptcy Code Section 345(b); provided, however, that such investments must be investments that are permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d), as reflected therein, or under applicable guidelines, rulings, or other controlling authorities. The GUC Trust, and by extension the GUC Trustee, shall have no liability in the event of the insolvency or failure of any institution in which he or she has invested any funds of the GUC Trust.

3.4.3. The GUC Trustee shall hold, collect, conserve, protect and administer the GUC Trust Assets in accordance with the provisions of this GUC Trust Agreement and the Plan, and pay and distribute amounts as set forth herein for the purposes set forth in this GUC Trust Agreement. Any determination by the GUC Trust, acting by and through the GUC Trustee, as to what actions are in the best interest of the GUC Trust shall be made in accordance with the GUC

Trustee's fiduciary duty to act in the best interest of the Holders of Allowed General Unsecured Claims and shall be determinative.

3.5 Bankruptcy Court Approval of GUC Trustee Actions. Except as provided in the Plan or otherwise specified in this GUC Trust Agreement, the GUC Trust, acting by and through the GUC Trustee, need not obtain the order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as otherwise provided herein, the GUC Trustee shall exercise its business judgment for the benefit of the Holders of Allowed General Unsecured Claims in order to maximize the value of the GUC Trust Net Assets and distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the GUC Trustee shall have the right to submit to the Bankruptcy Court any question or questions regarding which the GUC Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the GUC Trust with respect to any of the GUC Trust Assets, this GUC Trust Agreement, or the Plan, including the administration or distribution of any of the GUC Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and shall approve or disapprove any such proposed action upon motion by the GUC Trust.

3.6 Reliance by GUC Trustee:

- (a) The GUC Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties;
- (b) The GUC Trustee may consult with any and all of the GUC Trustee's professionals and the GUC Trustee shall not be liable for any action taken or omitted to be taken by the GUC Trustee in accordance with the advice of such professionals; and
- (c) Persons dealing with the GUC Trustee shall look only to the GUC Trust Assets to satisfy any liability incurred by the GUC Trustee to such Person in carrying out the terms of this GUC Trust Agreement, and the GUC Trustee shall not have any personal obligation to satisfy any such liability.

3.7 Valuation of GUC Trust Assets. The GUC Trustee shall apprise the Holders of Allowed General Unsecured Claims of the value of the GUC Trust Assets. The Debtors, the Holders of Allowed General Unsecured Claims, and the GUC Trustee will consistently report the valuation of the assets transferred to the GUC Trust. Such consistent valuations and revised reporting will be used for all U.S. federal, state, local, and other applicable income tax purposes. Income, deductions, gain, or loss from the GUC Trust shall be reported to the beneficiaries of the GUC Trust (the "Beneficiaries") in conjunction with the filing of the GUC Trust's income tax returns. Each Beneficiary shall report income, deductions, gain, or loss on such Beneficiary's income tax returns. Any dispute regarding the valuation of GUC Trust Assets shall be resolved by the Bankruptcy Court.

ARTICLE IV DISTRIBUTIONS FROM THE GUC TRUST

4.1 Distributions. After the Effective Date, as and to the extent required by the Plan, the GUC Trustee shall make distributions from the GUC Trust Net Assets in accordance herewith to Holders of Allowed General Unsecured Claims in respect of their interests in the GUC Trust.

4.2 Provisions Governing Distributions. All distributions to be made under this GUC Trust Agreement shall be made in accordance with the Plan.

4.3 Timing of Distributions. Any payment or other distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day, but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail for the entitled recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

4.4 Payments Limited to GUC Trust Net Assets. All payments to be made by the GUC Trustee to or for the benefit of any Allowed General Unsecured Claims shall be made only to the extent that the GUC Trust has sufficient funds or reserves to make such payments in accordance with this GUC Trust Agreement and the Plan. Each Holder of an Allowed General Unsecured Claim shall have recourse only to the GUC Trust Net Assets for distributions under this GUC Trust Agreement and the Plan.

4.5 Fees and Expenses.

4.5.1. From and after the Effective Date, the GUC Trustee is authorized to pay all GUC Trust Fees and Expenses from GUC Trust Assets. The Debtors, the Post-Effective Date Debtors, or any of their Affiliates (or anyone acting on their behalf) shall not be responsible for any costs, fees, or expenses of the GUC Trust.

4.6 Priority of Distributions. Any recovery by the GUC Trust on account of the GUC Trust Assets shall be applied in accordance with the Plan; provided, however, that the GUC Trust must pay or reserve for all GUC Trust Fees and Expenses before making distributions to Holders of Allowed General Unsecured Claims.

4.7 Compliance with Laws. Any and all distributions of GUC Trust Assets shall be in compliance with applicable laws except as may be expressly provided herein or in the Plan. Without limiting the generality of the foregoing, (a) the GUC Trust, acting by and through the GUC Trustee, shall make distributions from the GUC Trust to the Holders of Allowed General Unsecured Claims at least annually, to the extent it determines the GUC Trust has sufficient cash available for distribution from all net cash income and all other cash received by the GUC Trust; provided, however, that the GUC Trustee may, solely to the extent permitted by applicable law as to liquidating trusts (*e.g.*, Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684),

retain such amounts (i) as are reasonably necessary to meet contingent liabilities (including Disputed Claims), and to maintain the value of the Trust Assets during the term of the GUC Trust, (ii) to pay GUC Trust Fees and Expenses, and (iii) to satisfy all other liabilities incurred or assumed by the GUC Trust (or to which the GUC Trust Assets are otherwise subject) in accordance with the Plan and this GUC Trust Agreement and (b) the GUC Trust, acting by and through the GUC Trustee, in its discretion, may cause the GUC Trust to withhold and / or pay to the appropriate tax authority from amounts distributable from the GUC Trust to any Holder of an Allowed General Unsecured Claim any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Holder or the GUC Trust with respect to the amount to be distributed to such Holder. The GUC Trustee shall determine such maximum amount to be withheld by the GUC Trust in its sole, reasonable discretion and shall cause the GUC Trust to distribute to the Holder any excess amount withheld. All such amounts withheld and paid to the appropriate tax authority (or reserved pending resolution of the need to withhold) shall be treated as amounts distributed to such Holders of Claims for all purposes of this GUC Trust Agreement.

4.8 Setoff Rights. The GUC Trust, acting by and through the GUC Trustee and its applicable professionals, may, but shall not be required to, setoff against or recoup from the Holder of any Allowed ~~Claim (including any Holder of Allowed~~ General Unsecured Claim) on which payments or other distributions are to be made hereunder, claims or defenses of any nature that the GUC Trust may have against in connection with such ~~Person~~ claims. However, neither the failure to do so, nor the allowance of any Claim under the Plan or otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the holder of such Allowed Claim.

4.9 Right to Object to Claims in Class 4. The GUC Trustee shall have the exclusive responsibility and authority for administering, disputing, compromising and settling or otherwise resolving and finalizing payments or other distributions with respect to Holders of Allowed General Unsecured Claims that are Holders under the Plan, all without Bankruptcy Court approval, and may object to any such Claim until the later of one-hundred eighty (180) days following the Effective Date or such later date as may be approved by the Bankruptcy Court. The GUC Trustee at any time may move the Bankruptcy Court for an extension of such Claim objection deadline. The GUC Trustee shall generally prosecute objections to General Unsecured Claims pending as of the Effective Date and any additional objections it determines to file from and after the Effective Date but shall be entitled to exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any General Unsecured Claims. In addition, subject to the foregoing sentence, the GUC Trustee may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim in Class 4 pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

4.10 No Distributions Pending Allowance. If a Claim or any portion of a Claim is Disputed, no payment or distribution shall be made on account of any portion of such Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Plan or this GUC Trust Agreement.

4.11 Minimum Distributions. The GUC Trustee shall not make any distributions to a Holder of an Allowed General Unsecured Claim or Allowed Interest on account of such Allowed General Unsecured Claim or Allowed Interest of Cash or otherwise where such distribution is valued, in the reasonable discretion of the GUC Trustee, at less than \$100. Each Allowed General Unsecured Claim or Allowed Interest to which this limitation applies shall be discharged pursuant to the Plan, and its Holder shall be forever barred pursuant to the Plan from asserting that Claim or Interest against the GUC Trust, the Purchaser, or the Post-Effective Date Debtors or their property.

4.12 Dissolution of GUC Trust. Upon dissolution of the GUC Trust, any remaining GUC Trust Assets shall be distributed to GUC Trust Beneficiaries in accordance with the Plan and this GUC Trust Agreement as appropriate; provided, however, that if the GUC Trustee reasonably determines that such remaining GUC Trust Assets are insufficient to render a further distribution practicable, the GUC Trustee may (i) reserve any amount necessary to dissolve the GUC Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the Tax Code, (B) exempt from U.S. federal income tax under section 501(a) of the Tax Code, (C) not a “private foundation” as defined in section 509(a) of the Tax Code, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the GUC Trust, and any insider or affiliate of the GUC Trustee, and (iii) dissolve the GUC Trust.

ARTICLE V HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS

5.1 Identification and Addresses of Holders of Allowed General Unsecured Claims. In order to determine the actual names and addresses of Holders of Allowed General Unsecured Claims, the GUC Trust, acting by and through the GUC Trustee, may deliver a notice to such Holders. Such notice may include a form for each Holder to complete in order to be properly registered as a Holder and be eligible for distributions under the GUC Trust. Such form may request the Holder’s U.S. federal taxpayer identification number or social security number if the GUC Trustee determines that such information is necessary to fulfill the GUC Trust’s tax reporting and withholding obligations. A Holder may, after the Effective Date, select an alternative mailing address by notifying the GUC Trustee in writing of such alternative distribution address. Absent receipt of such notice, the GUC Trustee shall not be obligated to recognize any such change of address. Such notification shall be effective only upon receipt by the GUC Trustee. The GUC Trustee, in its reasonable discretion, may suspend distributions to any Holder that has not provided its U.S. federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 5.1. If tax information is not provided within ninety (90) days after an initial request, the applicable Holder’s underlying claim will be expunged and its interest in the GUC Trust disallowed for all purposes of this GUC Trust Agreement to the extent provided under the Plan. Each Holder’s interest in the GUC Trust is dependent upon such Holder’s classification under the Plan and the status of its Allowed Claim.

5.2 Beneficial Interest Only. A Holder’s interest in the GUC Trust shall not entitle any Holder to any title in or to, possession of, management of or control of any of the GUC Trust Assets or to any right to call for a partition or division of such GUC Trust Assets or to require an accounting, except as specifically provided herein. Except as expressly provided in this GUC

Trust Agreement, a Holder shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Trust Assets.

5.3 Ownership of Beneficial Interests Hereunder. Each Holder of an Allowed General Unsecured Claim shall own a beneficial interest in the GUC Trust (as represented by the GUC Trust Interest(s) issued to such Holder consistent with the Plan). The record holders of the GUC Trust Interests shall be recorded and set forth in a registry maintained by, or at the direction of, the GUC Trustee expressly for such purpose.

5.4 Evidence of Beneficial Interest.

5.4.1. Ownership of a GUC Trust Interest shall not be evidenced by any certificate, security, or receipt (unless otherwise determined by [the GUC Trust, acting by and through](#) the GUC Trustee) or in any other form or manner whatsoever. Ownership of the GUC Trust Interests shall be maintained on books and records of the GUC Trust maintained by the GUC Trustee, which may be the official claims register maintained in the Chapter 11 Cases. The GUC Trustee shall, upon the written request of a Holder of a beneficial interest, provide reasonably adequate documentary evidence of such Holder's Claim, as indicated on the books and records of the GUC Trust. The expense of providing such documentation shall be borne by the requesting Holder.

5.5 No Right to Accounting. Except as set forth in sections 7.4 and 7.9 of this GUC Trust Agreement, neither the Holders of a GUC Trust Interest nor their successors, assigns, creditors, or any other Person shall have any right to an accounting by the GUC Trustee, and the GUC Trustee shall not be obligated to provide any accounting to any Person. Nothing in this GUC Trust Agreement is intended to require the GUC Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the GUC Trust or as a condition for making any advance, payment, or distribution out of proceeds of GUC Trust Assets.

5.6 No Standing. Except as expressly provided in this GUC Trust Agreement, if at all, a Holder of a General Unsecured Claims shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Trust Assets.

5.7 Requirement of Undertaking. The GUC Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this GUC Trust Agreement, or in any suit against the GUC Trustee for any action taken or omitted by it as GUC Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; provided, however, that the provisions of this section 5.7 shall not apply to any suit by the GUC Trustee.

5.8 Limitation on Transferability. It is understood and agreed that the GUC Trust Interests shall be non-transferable and non-assignable during the term of this GUC Trust Agreement other than if transferred by will, intestate succession, or otherwise by operation of law. Any such Transfer by operation of law shall not be effective until appropriate notification

and proof thereof is submitted to the GUC Trust by and through the GUC Trustee, and the GUC Trustee may continue to cause the GUC Trust to pay all amounts to or for the benefit of the assigning Holders of Allowed General Unsecured Claims until receipt of proper notification and proof of such Transfer. The GUC Trustee may rely upon such proof without the requirement of any further investigation. Notwithstanding any other provision to the contrary, the GUC Trustee may disregard any purported Transfer of Claims by will, intestate succession or operation of law if sufficient necessary information (as reasonably determined by the GUC Trustee), including applicable tax-related information, is not provided by such purported transferee or assignee to the GUC Trustee.

5.9 Exemption from Registration. The parties hereto intend that the rights of the Holders of Allowed General Unsecured Claims arising under this GUC Trust Agreement shall not be “securities” under applicable laws, but none of the parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities law. If such rights constitute securities, the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws shall apply to their issuance under the Plan. No party to this GUC Trust Agreement shall make a contrary or different contention.

ARTICLE VI THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Parties Dealing With the GUC Trust and GUC Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the GUC Trust or the GUC Trustee shall be entitled to rely on the authority of the GUC Trustee or any of the GUC Trustee’s agents to act in connection with the GUC Trust Agreement. No Person that may deal with the GUC Trustee shall have any obligation to inquire into the validity or expediency or propriety of any transaction by the GUC Trustee or any agent of the GUC Trustee.

6.2 Limitation of GUC Trustee’s Liability. Anything herein to the contrary notwithstanding, in exercising the rights granted herein, the GUC Trustee shall exercise its best judgment, to the end that the affairs of the GUC Trust shall be properly managed and the interests of all the Holders of Allowed General Unsecured Claims are safeguarded; but the GUC Trustee shall not incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this GUC Trust Agreement, unless the GUC Trustee has acted with gross negligence, fraud or willful misconduct. The GUC Trustee’s obligations, duties, liabilities, and responsibilities under the Plan, the Confirmation Order and this GUC Trust Agreement are qualified in their entirety by the availability of and reasonable likelihood of recovery of sufficient assets or Cash to fund the GUC Trustee’s activities. Upon the appointment of a successor GUC Trustee and the delivery of the then remaining GUC Trust Assets to the successor GUC Trustee, the predecessor GUC Trustee and any of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer, and successors shall have no further liability or responsibility with respect thereto (other than liabilities arising prior to the cessation of its role as GUC Trustee). A successor GUC Trustee shall have no duty to examine or inquire into the acts or

omissions of its immediate or remote predecessor, and no successor GUC Trustee shall be in any way liable for the acts or omissions of any predecessor GUC Trustee, unless a successor GUC Trustee expressly assumes such responsibility. A predecessor GUC Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor GUC Trustee for any events or occurrences subsequent to the cessation of its role as GUC Trustee.

6.3 Indemnification. The GUC Trustee and each of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, independent contractors, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer and successors (each, an “Indemnified Party”) shall be indemnified for, and defended and held harmless against, by the GUC Trust and solely from the GUC Trust Assets, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred without gross negligence, willful misconduct, or fraud on the part of the applicable Indemnified Party (which gross negligence, willful misconduct, or fraud, if any, must be determined by a final, non-appealable order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or this GUC Trust Agreement, as applicable if the applicable Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the GUC Trust or the Beneficiaries. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, willful misconduct, or fraud. The amounts necessary for the indemnification provided in this Section 6.3 (including, but not limited to, any costs and expenses incurred in enforcing the right of indemnification in this Section 6.3) shall be paid by the GUC Trustee out of the GUC Trust Assets. The GUC Trustee shall not be personally liable for the payment of any GUC Trust Fees and Expenses or claim or other liability of the GUC Trust, and no Person shall look to the GUC Trustee personally for the payment of any such expense or liability. The indemnification provided in this Section 6.3 shall survive the death, dissolution, incapacity, resignation or removal of the GUC Trustee, Indemnified Party or the termination of the GUC Trust, and shall inure to the benefit of each Indemnified Party’s heirs and assigns.

ARTICLE VII

SELECTION, REMOVAL AND COMPENSATION OF GUC TRUSTEE

7.1 Appointment. The GUC Trustee has been selected pursuant to the provisions of the Plan. To effectuate an orderly and efficient transition of the administration, in accordance herewith, of the GUC Trust Assets for the benefit of the Holders of Allowed General Unsecured Claims.

7.2 Term of Service. The GUC Trustee shall serve until the earlier to occur of (a) the termination of the GUC Trust in accordance with this GUC Trust Agreement and the Plan or (b) the GUC Trustee’s death, dissolution, incapacity, resignation or removal.

7.3 Removal of a GUC Trustee. Any Person serving as GUC Trustee may be removed and replaced by an order of the Bankruptcy Court and a showing of good cause. The

removal shall be effective on the date specified in the order of the Bankruptcy Court. Notwithstanding the removal of the GUC Trustee pursuant to this Section 7.3, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.4 Resignation of GUC Trustee. The GUC Trustee may resign at any time by giving prior written notice of its intention to do so to its counsel and to the Post-Effective Date Debtors, which notice shall be at least thirty (30) days unless the resignation is due to a disability or other incapacity. Without limiting any other reporting or accounting obligations under the Plan or this GUC Trust Agreement, in the event of a resignation, the resigning GUC Trustee shall file with the Bankruptcy Court a full and complete written accounting of monies and GUC Trust Assets received, disbursed, and held during the term of office of that GUC Trustee. The resignation shall be effective on the later to occur of: (a) the date specified in the notice; or (b) the appointment of a successor made in accordance with Section 7.5; provided, that such resignation shall become effective, at the GUC Trustee's discretion, on the date specified in the GUC Trustee's notice without the appointment of a successor GUC Trustee if the Insurance Coverages (as defined below) terminate for any reason other than the GUC Trustee's unreasonable refusal to renew such Insurance Coverages, and provided further that if a successor GUC Trustee is not appointed or does not accept its appointment or if the appointment of a successor GUC Trustee has not been approved by the Bankruptcy Court within sixty (60) days following delivery of notice of resignation, the resigning GUC Trustee may petition the Bankruptcy Court for the appointment of a successor GUC Trustee. Notwithstanding the resignation of the GUC Trustee pursuant to this Section 7.4, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.5 Appointment of Successor GUC Trustee. Upon the resignation, death, dissolution, incapacity or removal of a GUC Trustee, counsel to the GUC Trustee at the time of such resignation, death, dissolution, incapacity or removal of such GUC Trustee shall file a motion with the Bankruptcy Court seeking to appoint a successor GUC Trustee to fill the vacancy so created, so long as any of the Chapter 11 Cases are pending, or file a notice of appointment of such successor GUC Trustee on the docket of the Chapter 11 Cases, if the Chapter 11 Cases are not pending. Any successor GUC Trustee so appointed pursuant to this Section 7.5 shall consent to and accept in writing the terms of this GUC Trust Agreement and agrees that the provisions of this GUC Trust Agreement shall be binding upon and inure to the benefit of the successor GUC Trustee.

7.6 Powers and Duties of Successor GUC Trustee. A successor GUC Trustee shall have all the rights, privileges, powers, and duties of his, her or its predecessor under this GUC Trust Agreement and the Plan. Notwithstanding anything to the contrary herein, a removed or resigning GUC Trustee shall, when requested in writing by the successor GUC Trustee, execute and deliver an instrument or, instruments conveying and transferring to such successor GUC Trustee under the GUC Trust all the estates, properties, rights, powers, and trusts of such predecessor GUC Trustee.

7.7 Trust Continuance. The death, resignation, dissolution, incapacity or removal of the GUC Trustee shall not terminate the GUC Trust or revoke any then-existing agency created pursuant to this GUC Trust Agreement or invalidate any action theretofore taken by the GUC Trustee.

7.8 Compensation and Costs of Administration. The GUC Trustee shall receive fair and reasonable compensation for its services as determined by GUC Trust Agreement between the GUC Trustee and the Creditors' Committee either on an hourly basis at the GUC Trustee's standard hourly billing rates or a flat monthly fee, plus all reasonable and documented costs and expenses, which shall be charged against and paid out of the GUC Trust Assets without further Bankruptcy Court approval or order. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the GUC Trustee (or professionals who may be employed by the GUC Trustee in administering the GUC Trust, in carrying out their responsibilities under this GUC Trust Agreement, or in any manner connected, incidental, or related thereto) shall be paid from the applicable GUC Trust Assets prior to any distribution to the Holders of Allowed General Unsecured Claims without further Bankruptcy Court approval or order (subject to the limitations set forth in this GUC Trust Agreement and the Plan).

7.9 Periodic Reporting; Filing Requirements.

7.9.1. The GUC Trustee shall provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning GUC Trust administration.

7.9.2. The GUC Trustee shall file tax returns for the GUC Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and any other applicable laws or regulations with the Holders of Allowed General Unsecured Claims treated as the grantors of the GUC Trust for U.S. federal income tax purposes in respect of their GUC Trust Interests. In addition, the GUC Trustee shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The GUC Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the GUC Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

7.9.3. The tax returns filed by the GUC Trustee shall report all GUC Trust earnings for the taxable year being reported. The "taxable year" of the GUC Trust shall be the "calendar year" as those terms are defined in Section 441 of the IRC.

7.10 Confidentiality. Except as required in the performance of its duties, the GUC Trustee shall, while serving as GUC Trustee under this GUC Trust Agreement, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the GUC Trust Assets relate or of which he has become aware in its capacity as GUC Trustee.

**ARTICLE VIII
MAINTENANCE OF RECORDS**

8.1 The GUC Trustee shall maintain accurate records of the administration of GUC Trust Assets, including receipts and disbursements and other activity of the GUC Trust, in such

detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the GUC Trust, if applicable. To the extent of any General Unsecured Claims reflected thereon, the Claims register may serve as the GUC Trustee's register of beneficial interests held by Holders of Claims. The books and records maintained by the GUC Trustee and any records of the Debtors transferred to the GUC Trust may be disposed of by the GUC Trustee at the later of (i) such time as the GUC Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the GUC Trust or Holders of Claims and (ii) upon the termination and completion of the winding down of the GUC Trust.

ARTICLE IX DURATION OF GUC TRUST

9.1 Duration. This GUC Trust Agreement shall remain and continue in full force and effect until the GUC Trust is terminated in accordance with the provisions of this GUC Trust Agreement and the Plan.

9.2 Termination of the GUC Trust. The GUC Trustee and the GUC Trust shall be discharged or terminated, as the case may be, at such time as: (a) all distributions required to be made by the GUC Trustee to the Holders of Allowed General Unsecured Claims have been made, but in no event shall the GUC Trust be terminated later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six (6) months before the end of the preceding extension), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the GUC Trust Assets. The GUC Trust may not be terminated at any time by the Holders of Claims. In connection with the termination of the GUC Trust, notwithstanding other provisions hereof, including section 3.1, any remaining GUC Trust Assets that the GUC Trustee determines, in its sole discretion, are of inconsequential value or otherwise insufficient to support the cost of a distribution, may be transferred by the GUC Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the IRC.

9.3 Continuance of GUC Trust for Winding Up. After the termination of the GUC Trust and for the purpose of liquidation and winding up the affairs of the GUC Trust, the GUC Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the GUC Trust. Subject to the provisions of Section 8.1 hereof, after the termination of the GUC Trust, the GUC Trustee, for a time, may retain or cause to be retained certain books, records, lists of Holders, and certificates and other documents and files that shall have been delivered to or created by the GUC Trustee. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the GUC

Trust and final distribution of the GUC Trust, the GUC Trustee shall have no further duties or obligations hereunder.

**ARTICLE X
MISCELLANEOUS**

10.1 Books and Records. The GUC Trustee shall be provided with reasonable access, during normal business hours, to the Debtors' or the Post-Effective Date Debtors' (as applicable) personnel and books and records upon request in order to allow the GUC Trustee to discharge its duties in reconciling and prosecuting objections to General Unsecured Claims.

10.2 Preservation of Privilege. In connection with the rights and claims that constitute GUC Trust Assets, any attorney-client privilege, work-product doctrine, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the GUC Trust pursuant to the terms of the Plan or otherwise shall vest in the GUC Trustee and his representatives, and the GUC Trustee is authorized to take all necessary actions to effectuate the transfer of such privileges, as necessary. The GUC Trustee's receipt of such privileges shall not operate as a waiver of any other privileges or immunities possessed or retained by the Debtors or Post-Effective Date Debtors (as applicable).

10.3 Notices. Unless otherwise expressly provided herein, all notices to be given to Holders of Claims may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by the GUC Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the GUC Trust shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery (if receipt is confirmed) addressed as follows:

If to the GUC Trust: [Cyxtera GUC Trust](#)
[c/o META Advisors LLC](#)
[3 World Trade Center](#)
[175 Greenwich Street](#)
[New York, NY 10007](#)
[Attn: James S. Carr](#)
[Dana P. Kane](#)

With a copy to: Pachulski Stang Ziehl & Jones LLP
Bradford J. Sandler and Paul J. Labov
780 Third Avenue, 34th Floor
New York, NY 10017
bsandler@pszjlaw.com
plabov@pszjlaw.com

or to such other address as may from time to time be provided in written notice by the GUC Trustee.

10.4 No Bond / Insurance. Notwithstanding any state law to the contrary, the GUC Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction, unless the GUC Trustee decides in its reasonable judgment to obtain such bond or other security. The GUC Trustee is hereby authorized, but not required to obtain all reasonable insurance coverage for itself, its agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the GUC Trustee and its agents, representatives, employees or independent contractors under this GUC Trust Agreement and the Plan (“Insurance Coverages”). The cost of any such Insurance Coverage shall be a GUC Trust Fee and Expense and paid out of the GUC Trust Assets.

10.5 Governing Law. This GUC Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (excluding conflict of laws rules), including all matters of validity, construction and administration; provided, however, that there shall not be applicable to the GUC Trust, the GUC Trustee or this GUC Trust Agreement, (a) the provisions of Section 3540 of Title 12 of the Delaware Code and (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof, (i) the filing with any court or governmental body or agency of trustee accounts or schedule of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents or employees of a trust, (v) the allocation of receipts and expenditures to income and principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees.

10.6 Successors and Assigns. This GUC Trust Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

10.7 Headings. The various headings of this GUC Trust Agreement are inserted for convenience only and shall not affect the meaning or understanding of this GUC Trust Agreement or any provision hereof.

10.8 Cumulative Rights and Remedies. The rights and remedies provided in this GUC Trust Agreement are cumulative and not exclusive of any rights and remedies under law or in equity.

10.9 No Execution. All funds in the GUC Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Holder of an Allowed General Unsecured Claim, and no such Holder or any other Person can execute upon, garnish or attach the GUC Trust Assets or the GUC Trust in any manner or compel payment from the GUC Trust except by Final Order of the Bankruptcy Court. Payment will be solely governed by this GUC Trust Agreement and the Plan.

10.10 Intention of Parties to Establish Grantor Trust. This GUC Trust Agreement is intended to create a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust. Consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684, the GUC Trust shall be treated as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the IRC. As such, for U.S. federal income tax purposes, the Holders of Allowed General Unsecured Claims will be treated as both the grantors and the deemed owners of the GUC Trust.

10.11 Tax Treatment of Reserves for Disputed Claims. The GUC Trustee shall maintain reserves for Disputed Claims as provided in the Plan or otherwise in the GUC Trustee's sole discretion. The GUC Trustee may, in the GUC Trustee's sole discretion, determine the best way to report for tax purposes with respect to any reserve for any Disputed Claims of Holders of Allowed General Unsecured Claims, including, but not limited to, (i) filing a tax election to treat any and all reserves for Disputed Claims as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Regulations Section 1.468B-9 for U.S. federal income tax purposes rather than to tax such reserve as a part of the GUC Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report any reserve for Disputed Claims as a DOF, the GUC Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due. For the avoidance of doubt, all of the GUC Trust's income shall be treated as subject to tax on a current basis consistent with Revenue Procedure 82-58, 1982-2, C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684.

10.12 Amendment. The GUC Trustee may, from time to time, modify, supplement, or amend this GUC Trust Agreement but only to clarify any ambiguity or inconsistency, or render the GUC Trust Agreement in compliance with its stated purposes, and only if such amendment

does not materially and adversely affect the interests, rights, treatment, or distributions of any Holder of an Allowed General Unsecured Claim. The GUC Trustee, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this GUC Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

10.13 Waiver. No failure by any Party to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

10.14 Severability. If any term, provision, covenant or restriction contained in this GUC Trust Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this GUC Trust Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.15 Counterparts and Facsimile Signatures. This GUC Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

10.16 Jurisdiction. The Bankruptcy Court shall have jurisdiction regarding the GUC Trust, the GUC Trustee, and the GUC Trust Assets, including the determination of all disputes arising out of or related to administration of the GUC Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters arising out of or related to this GUC Trust Agreement or the administration of the GUC Trust. The parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this GUC Trust Agreement, then the provisions of this GUC Trust Agreement shall have no effect on and shall not control, limit or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this GUC Trust Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this GUC Trust Agreement as of the day and year written above.

DEBTORS:

Cyxtera Technologies, Inc.
~~_____~~
Cyxtera Canada TRS, ULC
Cyxtera Canada, LLC
Cyxtera Communications Canada, ULC
Cyxtera Communications, LLC
Cyxtera Data Centers, Inc.
Cyxtera DC Holdings, Inc.
Cyxtera DC Parent Holdings, Inc.
Cyxtera Digital Services, LLC
Cyxtera Employer Services, LLC
Cyxtera Federal Group, Inc.
Cyxtera Holdings, LLC
Cyxtera Management, Inc.
Cyxtera Netherlands B.V.
Cyxtera Technologies Maryland, Inc.
Cyxtera Technologies, LLC

By: _____
Name: Victor Semah
Title: Chief Legal ~~Counsel~~ Officer

TRUSTEE:

~~_____~~ META Advisors LLC, not
individually, but solely in its capacity as GUC
Trustee of the GUC Trust

By: _____
Name: ~~_____~~ James S. Carr
Title: Managing Director

Exhibit E

Plan Administrator Agreement

PLAN ADMINISTRATOR AGREEMENT

This Plan Administrator Agreement (the “**Agreement**”) is made January [12], 2023, by and among Cyxtera Technologies, Inc.; Cyxtera Communications, LLC; Cyxtera Canada TRS, ULC; Cyxtera Canada, LLC; Cyxtera Communications Canada, ULC; Cyxtera Data Centers, Inc.; Cyxtera DC Holdings, Inc.; Cyxtera DC Parent Holdings, Inc.; Cyxtera Digital Services, LLC; Cyxtera Employer Services, LLC; Cyxtera Federal Group, Inc.; Cyxtera Holdings, LLC; Cyxtera Management, Inc.; Cyxtera Netherlands B.V.; Cyxtera Technologies Maryland, Inc.; and Cyxtera Technologies, LLC (each a “**Debtor**” and collectively, the “**Debtors**”) and PIRINATE Consulting Group, LLC, as administrator (the “**Plan Administrator**”) under the *Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 694] (as may be altered, amended, or modified from time to time, the “**Plan**”). This Agreement sets forth, among other things, the scope of the services to be provided by the Plan Administrator. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

RECITALS:

A. WHEREAS, on June 4, 2023 (the “**Petition Date**”), the Debtors commenced with the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”) voluntary cases (the “**Chapter 11 Cases**”) pursuant to chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

B. WHEREAS, on November 13, 2023, the Debtors filed the Plan, and by the *Revised Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 Of the Bankruptcy Code* entered on November 17, 2023 [Docket No. 718] (the “**Confirmation Order**”), the Bankruptcy Court confirmed the Plan.

C. WHEREAS, by the Confirmation Order, the Bankruptcy Court, among other things, authorized and approved the Sale Transaction.

D. WHEREAS, the Plan became effective on January [12], 2023 (the “**Effective Date**”).

E. WHEREAS, pursuant to the Plan, as of the Effective Date and solely in the event the Sale Transaction is consummated, the Plan Administrator will be appointed as Plan Administrator to implement the Plan, make distributions to Holders of certain Allowed Claims, and wind down, dissolve, and liquidate the Debtors’ Estates, in each case, for the benefit of the Holders of Allowed Claims other than Holders of General Unsecured Claims (the “**Beneficiaries**”).

F. WHEREAS, the Sale Transaction closed and was consummated on January [12], 2023.

G. WHEREAS, pursuant to the Plan, the Plan Administrator has the authority and right on behalf of the Post-Effective Date Debtors, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement the provisions of the Plan.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

1. *Acceptance of Appointment.* The Debtors hereby appoint PIRINATE Consulting Group, LLC to serve as Plan Administrator, and PIRINATE Consulting Group, LLC accepts its appointment as Plan Administrator and agrees to oversee and provide the services to be provided by the Plan Administrator pursuant to the Plan and the Confirmation Order, and as set forth herein (the “*Services*”). Notwithstanding the date of execution of this Agreement, this Agreement shall only become effective on the Effective Date.

2. *Duties, Powers, and Rights of Plan Administrator.* From and after the Effective Date, but subject to the Plan, the Plan Administrator shall act for the Post-Effective Date Debtors and the Beneficiaries in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof. The Plan Administrator shall have all duties, powers, and rights set forth herein, in the Plan and in the Confirmation Order, including the following:

(i) open and maintain bank accounts on behalf of or in the name of the Post-Effective Date Debtors and designate additional authorized signers on bank accounts as may be necessary (other than any Professional Fee Escrow Account), calculate and make distributions to Beneficiaries, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves (other than on account of General Unsecured Claims and/or any Professional Fee Escrow Account), in the name of the Post-Effective Date Debtors;

(ii) subject to Bankruptcy Court approval when necessary, except to the extent Claims have been previously Allowed, control and effectuate the Claims reconciliation process, including to object to, seek to subordinate, reclassify, compromise or settle any and all Claims against the Debtors, other than the General Unsecured Claims;

(iii) following the Effective Date, the Plan Administrator, or one or more designees thereof, shall serve as the member(s) or director(s) of any such board of the Post-Effective Date Debtors in the event that the Plan Administrator deems doing so necessary at any time following the Effective Date in order to effectuate the provisions of the Plan. The Plan Administrator shall be authorized to file on behalf of the Post-Effective Date Debtors, certificates of dissolution and any and all other corporate and company documents necessary to effectuate the Wind Down without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, the board of directors, or board of directors or similar governing body of the Debtors or Post-Effective Date Debtors, *provided* that pursuant to the Plan, upon the filing by the Plan Administrator of a certification with the Bankruptcy Court that all distributions have been made, all of its duties under the Plan and the Purchase Agreement have been completed, and entry of a final decree closing the last of the Chapter 11 Cases, the Post-Effective Date Debtors shall be deemed to be dissolved without any further action by the Plan Administrator or the Post-Effective Date Debtors;

(iv) make distributions to the Beneficiaries in accordance with the Plan (unless otherwise directed by the Bankruptcy Court);

(v) withhold from the amount distributable to any Beneficiary such amount as may be sufficient to pay any tax or other charges which the Plan Administrator has determined, in its reasonable discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision thereof;

(vi) exercise its reasonable business judgment to effectuate the Wind Down, sell, liquidate, operate, use, acquire, or dispose of property (including the liquidation, sale and/or abandonment of the remaining assets after consummation of the Sale Transaction) of the Post-Effective Date Debtors under the Plan and in accordance with applicable law as necessary to maximize distributions to the Beneficiaries;

(vii) prepare, file, and prosecute any necessary filings and/or pleadings with the Bankruptcy Court to carry out the duties of the Plan Administrator as described herein;

(viii) subject in all respects to Articles IV.E and VIII of the Plan and to the extent not otherwise expressly waived relinquished, exculpated, released, compromised, or settled, prosecute all Causes of Action retained by the Post-Effective Date Debtors after the Effective Date on behalf of the Post-Effective Date Debtors, elect not to pursue any such Causes of Action, and determine whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Post-Effective Date Debtors' and the Estates;

(ix) make payments to the AHG Advisors in accordance with the Plan and to any professionals who may be engaged by the Plan Administrator after the Effective Date;

(x) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals and consultants to assist in performing its duties under the Plan and in the Wind Down of the Estates pursuant to Section 5 hereof;

(xi) appoint officers as necessary to effectuate the Wind Down in accordance with the Plan;

(xii) maintain the books and records and accounts of the Debtors and the Post-Effective Date Debtors;

(xiii) incur and pay, reasonable and necessary documented expenses in connection with the preparation for and/or the performance of duties under the Plan, including the reasonable and documented fees and expenses of Professionals retained by the Plan Administrator, whether such fees and expenses are incurred before or after the Effective Date;

(xiv) prepare, or cause to be prepared, and file or cause to be filed, as necessary, all final or otherwise required federal, state, and local tax returns for the Debtors and pay the tax liabilities of the Debtors or Post-Effective Date Debtors due and payable after the Effective Date;

(xv) as applicable, (a) seek a determination of tax liability under section 505 of the Bankruptcy Code, (b) prepare and file any and all informational returns, reports, statements, returns or disclosures relating to the Debtors and the Post-Effective Date Debtors that are required thereunder, by any Governmental Unit or applicable law, (c) make tax elections for and on behalf

of the Post-Effective Date Debtors, and (d) seek any tax refunds that may be available to the Post-Effective Date Debtors;

(xvi) require any Beneficiary to furnish to the Plan Administrator (i) its social security number or employer or taxpayer identification number as assigned by the IRS and (ii) the original Form W-8 or copy of Form W-9, as applicable, as completed by each Beneficiary, and the Plan Administrator may condition any distribution to any Beneficiary upon the receipt of such information;

(xvii) pay statutory fees and file reports in accordance with Article XII.D of the Plan; and

(xviii) perform other duties and functions that are consistent with the implementation of the Plan.

3. *Reporting by the Plan Administrator.* On a semiannual basis, the Plan Administrator shall provide or make available a written report and account to the then current members of the AHG, which report and account sets forth (i) the financial statements of the Post-Effective Date Debtors at the end of each period and (ii) the receipts and disbursements of the Post-Effective Date Debtors for such period. Notwithstanding, and without limitation of, the foregoing, the Plan Administrator shall respond to reasonable requests for information regarding distributions, the Wind-Down and the Claims reconciliation process that may be made by the AHG Advisors.

4. *No Other Duties.* Other than the duties and obligations of the Plan Administrator specifically set forth in this Agreement, the Plan, or the Confirmation Order, the Plan Administrator shall have no duties or obligations of any kind or nature with respect to its position.

5. *Retention of Professionals.* The Plan Administrator may hire (or continue to engage previously hired Debtor professionals) attorneys, accountants, and other professionals, consultants, or other advisors (collectively, "**Professionals**") as may be necessary, required or appropriate in connection with its duties herein, and pay reasonable compensation to such Professionals. Any Professionals retained by the Plan Administrator shall be entitled to reasonable compensation for services rendered and reimbursement of reasonable and documented fees, costs and expenses incurred. The payment of the fees, costs and expenses of the Plan Administrator and its retained Professionals, whether incurred before or after the Effective Date, shall be made after the Effective Date in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court, *provided, however*, that any disputes related to such fees, costs and expenses shall be brought before the Bankruptcy Court.

6. *Insurance.* The Plan Administrator shall be authorized to obtain all reasonably necessary insurance coverage and shall be reimbursed pursuant to Section 8 hereof.

7. *Fees.* The fees of the Plan Administrator shall be \$25,000.00 per month until the date its appointment is terminated pursuant to Sections 9 and 10 hereof (collectively, the "**Fees**"). The initial payment of \$25,000.00 shall be made within ten (10) business days following the Effective Date, and each successive payment shall be made on the same date (or next subsequent business day) of each month going forward. The Fees shall be payable out of the Wind-Down Reserve.

8. *Expenses.* In performance of the Services, the reasonable and documented out of pocket expenses of the Plan Administrator, including, for the avoidance of doubt, any insurance policy obtained by the Plan Administrator in connection with the Services, shall be reimbursed, payable from the Wind-Down Reserve.

9. *Service of Plan Administrator.* The Plan Administrator shall serve until the earlier to occur of (a) (i) the Estates have been fully administered and all of the Post-Effective Date Debtors' assets have been liquidated or abandoned, (ii) all duties and obligations of the Plan Administrator have been fulfilled, (iii) all distributions required to be made under the Plan and this Agreement have been made, and (iv) a Final Order has been entered by the Bankruptcy Court closing the last of the Chapter 11 Cases; or (b) the Plan Administrator's death, resignation, dissolution, incapacity or removal. Subject to Section 11, the Plan Administrator may resign at any time by giving at least forty-five (45) days' prior written notice of its intention to do so ("**Resignation Notice**") to the U.S. Trustee, the Bankruptcy Court, the AHG Advisors, and counsel to the Debtors (Kirkland & Ellis LLP). Upon the occurrence of any event described in the foregoing clause (a) or (b), all responsibilities of the Plan Administrator relating to the Debtors and Post-Effective Date Debtors or arising under the Plan, the Confirmation Order and/or this Agreement shall terminate and no further Fees shall be due to the Plan Administrator, *provided* that (a) the Plan Administrator shall be entitled to the Fees pro-rated through, and reimbursement of reasonable expenses incurred prior to, such termination in accordance with Sections 7 and 8 of this Agreement, and (b) all of the Plan Administrator's rights and protections with respect to acts or omissions occurring prior to the effectiveness of such termination shall survive.

10. *Removal of Plan Administrator.* The Plan Administrator may be removed and replaced at any time for cause. Any Beneficiary, on notice and hearing before the Bankruptcy Court, may seek removal of the Plan Administrator for cause.¹ The Plan Administrator shall be entitled to recover its fees and expenses (including legal fees) from any party that unsuccessfully attempts to remove the Plan Administrator for cause. Such removal, if any, shall be effective on the date specified in the Final Order approving removal by the Bankruptcy Court.

11. *Resignation of Plan Administrator.* In the event of a resignation, the Plan Administrator shall continue to serve until the earlier to occur of (a) the date that is forty-five (45) days after the date the Resignation Notice is filed with the Bankruptcy Court and served on the U.S. Trustee, the AHG Advisors, and counsel to the Debtors (Kirkland & Ellis LLP), and (b) a successor Plan Administrator is identified and accepts the appointment as Plan Administrator and notice is provided to the Bankruptcy Court, U.S. Trustee, the AHG Advisors and counsel to the Debtors (Kirkland & Ellis LLP) of such successor Plan Administrator. Notwithstanding the resignation of the Plan Administrator pursuant to this Section 11, the rights of the resigning Plan Administrator under this Agreement with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning Plan Administrator following the effectiveness of such resignation. Notwithstanding any other provision herein, upon

¹ For purposes of this Agreement, the term "for cause" shall mean: (i) the conviction of a crime under the laws of the United States or any state thereof involving fraud, theft, false statements or other similar acts, or the commission of any crime that is a felony (or a comparable classification in a jurisdiction that does not use such terms) under such laws; or (ii) the willful, grossly negligent or repeated failure to perform any material employment-related duties as determined by Final Order of the Bankruptcy Court.

the resignation of the Plan Administrator (other than a resignation for cause), the Plan Administrator shall reasonably assist and cooperate in effecting the assumption of the duties by any successor Plan Administrator.

12. *Appointment of Successor Plan Administrator.* Upon resignation or dissolution of a Plan Administrator, the Plan Administrator shall recommend to the Holders of the First Lien Claims a successor Plan Administrator and provide notice of the same to the AHG Advisors and counsel to the Debtors (Kirkland & Ellis LLP). Upon the consent of the Required Consenting Term Lenders and the acceptance of the appointment by the successor Plan Administrator, the Plan Administrator shall file with the Bankruptcy Court a notice of the appointment of such successor Plan Administrator, which appointment shall be effective as of the date the notice is filed, without any further act or need for an order of the Bankruptcy Court, and the successor Plan Administrator shall become fully vested with all of the rights, powers, duties and obligations of the predecessor. Upon the death, incapacity or removal of a Plan Administrator, the Bankruptcy Court upon request of any Beneficiary or on its own motion shall appoint a successor Plan Administrator on an interim or permanent basis, *provided* that any successor Plan Administrator must be acceptable to the Required Consenting Term Lenders. Any successor Plan Administrator so appointed shall consent to and accept in writing the terms of this Agreement and agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Plan Administrator. Upon the appointment of a successor Plan Administrator, the predecessor Plan Administrator shall have no further liability or responsibility with respect to the Debtors or Post-Effective Date Debtors. A successor Plan Administrator shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor, and no successor Plan Administrator shall be in any way liable for the acts or omissions of any predecessor Plan Administrator, unless a successor Plan Administrator expressly assumes such responsibility. A predecessor Plan Administrator shall have no liability for the acts or omissions of any immediate or subsequent successor Plan Administrator for any events or occurrences subsequent to the cessation of its role as Plan Administrator.

13. *Powers and Duties of Successor Plan Administrator.* For the avoidance of doubt, a successor Plan Administrator shall have all the rights, privileges, powers, and duties of its predecessor under this Agreement and the Plan.

14. *Plan Provisions.* In connection with all actions taken in its capacity as Plan Administrator, the Plan Administrator shall be entitled to rely upon the applicable exculpation, release, and indemnification and limitation of liability provisions set forth in any organizational document of the Debtors, this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein, the Plan Administrator shall not be entitled to any release, exculpation, or indemnification if the Plan Administrator is determined to have engaged in fraud, gross negligence, or willful misconduct as determined by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The applicable exculpation, release, and indemnification and limitation of liability provisions set forth in the Plan, the Confirmation Order and this Agreement (including, for the avoidance of doubt, Sections 14 through and including 19 herein) shall survive the termination of (a) this Agreement or consummation of the Plan, and (b) any Indemnified Party from the capacity for which it was deemed indemnified, and shall remain available to and binding upon any Indemnified Party and any estate of any decedent Indemnified Party.

15. *Exculpation.* None of the Plan Administrator or its Professionals, agents, or any of their respective directors, officers, affiliates, employees, employers, successors, assigns, agent, or representatives (collectively, the “*Indemnified Parties*”) shall be liable for any losses, claims, damages, liabilities, obligations settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including, without limitation, reasonable legal or other professional fees and disbursements and the costs and expenses of investigating, analyzing and responding to claims, of any kind or nature (each a “*Loss*” and collectively, “*Losses*”), whether or not in connection with litigation in which any Indemnified Parties is a party or enforcing this Agreement (including this exculpation provision), incurred, caused by, relating to, based upon, or arising out of (directly or indirectly) the Indemnified Parties’ execution, delivery, and acceptance of, or performance or nonperformance of their powers, duties, and obligations under, this Agreement, the Plan, the Confirmation Order, any other order of the Bankruptcy Court, any applicable law or as may arise by reason of any action, omission, or error of an Indemnified Party, except to the extent it is finally determined by the Bankruptcy Court to be based upon gross negligence, willful misconduct, or fraud of such Indemnified Party, *provided* that in no event will any such Person be liable for punitive, exemplary, consequential, or special damages under any circumstances. Every act taken or omitted, power exercised, or obligation assumed by or on behalf of the Debtors, the Post-Effective Date Debtors, the Estates or any of the Indemnified Parties pursuant to the provisions of this Agreement, the Plan, the Confirmation Order or any other order of the Bankruptcy Court shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Indemnified Parties acting for and on behalf of the Debtors, the Post-Effective Date Debtors and the Estates and not otherwise, *provided, however*, that none of the foregoing Indemnified Parties are deemed to be responsible for any other such Indemnified Parties’ actions or inactions.

16. *Reliance by Plan Administrator.* To the fullest extent permitted by applicable law, the Plan Administrator may rely, and shall be fully protected in acting or refraining from acting if it relies, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Plan Administrator reasonably believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of e-mails or facsimiles, to have been sent or the Plan Administrator reasonably believes to have been sent by the proper party or parties, and the Plan Administrator may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. To the fullest extent permitted by applicable law, the Plan Administrator may consult with counsel, accountants, financial advisors, and other Professionals with respect to matters in their area of expertise, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or not taken by the Plan Administrator (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). To the fullest extent permitted by applicable law, the Plan Administrator shall be entitled to rely upon the advice of such Professionals in acting or failing to act, and shall not be liable for any act taken or not taken in reliance thereon (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). Notwithstanding the foregoing, the Plan Administrator shall be under no obligation to consult with any Professionals and its determination not to do so shall not result in the imposition of liability on the Plan Administrator unless such determination

is based on willful misconduct, gross negligence, or fraud. To the fullest extent permitted by applicable law, the Plan Administrator shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning its rights or duties under or in connection with this Agreement, the Plan, or any other document executed in connection herewith or therewith, and the Plan Administrator shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon. For the avoidance of doubt, to the fullest extent permitted by applicable law, the Plan Administrator and the other Indemnified Parties shall be entitled to rely upon written information previously generated by the Debtors, the Estates or their professional and advisors, and any action taken or omitted to be taken by the Indemnified Parties in reliance thereon or with the approval of a court of competent jurisdiction will conclusively be deemed not to constitute gross negligence, willful misconduct, or fraud.

17. *Limitation on Liability.* The Plan Administrator shall be deemed a judicial officer for purposes of immunity from civil action. No Holder of a Claim or Equity Interest or representative thereof shall have or pursue any Cause of Action against the Plan Administrator or any other Indemnified Parties for taking any action in accordance with, or to implement the provisions of, the Plan, this Agreement, the Confirmation Order, or any order of the Bankruptcy Court. Persons and Entities dealing with the Plan Administrator shall have recourse only and shall look only to the Post-Effective Date Debtors' assets to satisfy any Losses or other liability incurred by the Indemnified Parties to such Person or Entity in carrying out the terms of this Agreement, the Plan, and the Confirmation Order and the Indemnified Parties shall have no personal obligation to satisfy such liability. Notwithstanding anything contained in this Agreement, in no event shall will any Indemnified Parties be liable for punitive, exemplary, consequential, or special damages under any circumstances.

18. *Indemnification.* The Post-Effective Date Debtors and their Estates shall, to the fullest extent permitted by law, indemnify the Indemnified Parties for, and shall defend and hold them harmless against, any Loss incurred (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction), in connection with or arising from the acceptance, administration, exercise, and performance of their duties under the Plan, this Agreement or the Confirmation Order or in connection with the administration of the Estates and/or the Wind Down. An act or omission taken with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence or willful misconduct. In addition, the Post-Effective Date Debtors and the Estates shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including reasonable and documented attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Post-Effective Date Debtors, the Estates or the implementation or administration of the Plan (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). To the extent an Indemnified Party asserts a claim for indemnification hereunder, the reasonable and documented legal fees and related costs incurred by counsel to such party and/or Plan Administrator in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced by the Post-Effective Date Debtors and the Estates (and such Indemnified Party undertakes to repay such

amounts if it ultimately shall be determined through a final non-appealable order that such Indemnified Party is not entitled to be indemnified therefor). To the extent the Post-Effective Date Debtors indemnify, defend, and hold harmless any Indemnified Parties as provided above, the reasonable and documented legal fees and related costs incurred by counsel to the Plan Administrator in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as an expenses of the Post-Effective Date Debtors prior and superior to any other rights of Beneficiaries to receive distributions under the Plan. For the avoidance of doubt, the reasonable and documented costs and expenses incurred in enforcing the right of indemnification shall be paid by the Post-Effective Date Debtors. In addition to the indemnification provided hereunder or any other indemnification provided to the Plan Administrator, the Plan Administrator (in its capacity as such) shall be indemnified and held harmless as set forth in Article IV.D.4 of the Plan.

19. *Burden of Proof.* In any proceeding brought by any of the Post-Effective Date Debtors or the Estates, or any other Person or Entity who is bound by this Agreement challenging any action, determination or failure to act of any of the Indemnified Parties in discharge of their duties under this Agreement or the Plan, the Person or Entity bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or failure to act constituted gross negligence, willful misconduct, or fraud. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, each determination, action or failure to act of the Indemnified Parties in the discharge of their duties under this Agreement or the Plan is, to the extent consistent with this Agreement or the Plan, hereby deemed to not constitute a breach of this Agreement, the Plan or any duty hereunder, thereunder or existing at law, in equity or otherwise.

20. *Reliance by Entities Dealing with the Plan Administrator.* In the absence of actual knowledge to the contrary, any Person or Entity dealing with the Post-Effective Date Debtors or the Estates shall be entitled to rely on the authority of the Plan Administrator to act on behalf of the Post-Effective Date Debtors or the Estates and shall have no obligation to inquire into the existence of such authority. Each Person or Entity who is bound by this Agreement hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person or Entity to contest, negate or disaffirm any action of the Plan Administrator in connection with any such dealing. Each and every certificate, document or other instrument executed on behalf of the Post-Effective Date Debtors or the Estates by the Plan Administrator or its representative or agents shall be conclusive evidence in favor of any and every Person or Entity relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person or Entity executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Post-Effective Date Debtors or the Estates and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon Post-Effective Date Debtors and the Estates.

21. *No Successor Liability.* Except as otherwise expressly provided in the Plan and Confirmation Order, the Plan Administrator (i) is not, and shall not be deemed to assume, agree to perform, pay, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other Person relating to or arising out of the operations or the assets of the Debtors prior to

the Effective Date; (ii) is not, and shall not be, successor to the Debtors by any reason of any theory of law or equity or responsible for the knowledge or conduct of any Debtor prior to the Effective Date; and (iii) shall not have any successor or transferee liability of any kind or character.

22. *Effect of Termination; Survival.* Upon termination of this Agreement, the Plan Administrator shall have no further duties or obligations hereunder or as Plan Administrator, except as specifically provided herein. For the avoidance of doubt, any other provision in the Agreement, which, by its terms, specifically survives termination of the Agreement, shall survive termination of this Agreement.

23. *Headings.* The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or of any term or provision hereof.

24. *Amendment; Waiver.* The Plan Administrator, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order, *provided* that the Plan Administrator may make any non-material modification, supplement, or amendment to this Agreement to clarify any ambiguity or inconsistency or render this Agreement in compliance with its stated purposes so long as such modification, supplement, or amendment is approved by the Required Consenting Term Lenders and prior notice is provided to counsel to the Debtors (Kirkland & Ellis LLP). No failure by any party hereto to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

25. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the rules of conflict of laws of the State of New York or any other jurisdiction.

26. *Retention of Jurisdiction.* The Bankruptcy Court shall retain jurisdiction over this Agreement.

27. *Conflict with Plan.* This Agreement incorporates and is subject to the provisions of the Plan. To that end, the Plan Administrator shall have full power and authority to take any action consistent with the purposes and provisions of the Plan. In the event that the provisions of this Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control. Notwithstanding anything to the contrary contained herein, all fees, costs, expenses, and payments hereunder shall be subject in all respects to the provisions of the Plan.

28. *Severability.* If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make such provision enforceable, or, if necessary, this Agreement shall be deemed to be amended to delete the unenforceable provision or portion thereof. In the event any provision is deleted or amended, the remaining provisions shall remain in full force and effect. Notwithstanding the foregoing, the parties recognize and agree that this Agreement is to be interpreted and applied

in such manner as to, as nearly as possible, give effect to the parties' intent to all provisions hereof, including, without limitation, such provisions as may be declared to be unenforceable.

29. *Waiver.* No failure by the Plan Administrator to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

30. *Cumulative Rights and Remedies.* The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

31. *Limitation of Benefits.* Except as otherwise specifically provided in this Agreement, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

32. *Integration.* This Agreement (together with the Plan and the Confirmation Order) sets forth in full the terms of agreement between the parties with respect to the transactions contemplated herein, superseding all other discussions, promises, representations, warranties, agreements and understandings, whether written or oral, between the parties with respect thereto.

33. *Notices.* Unless otherwise expressly specified or permitted by the terms of the Plan, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or email transmission (and confirmed by mail), in any such case addressed as follows:

If to the Plan Administrator: PIRINATE Consulting Group, LLC
5 Canoe Brook Drive
Livingston, New Jersey 07039
Attention: Eugene Davis
Email address: genedavis@pirinateconsulting.com

With a copy to (which shall not constitute notice):

Halperin Battaglia Benzija, LLP
40 Wall Street
New York, NY 10005
Attention: Alan D. Halperin
Email address: ahalperin@halperinlaw.net

If to the Post-Effective Date Debtors: Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Edward O. Sassower, Christopher Marcus,
Derek I. Hunter, Brian Nakhaimousa
E-mail addresses: esassower@kirkland.com,
christopher.marcus@kirkland.com
derek.hunter@kirkland.com
brian.nakhaimousa@kirkland.com

If to the AHG or the AHG Advisors: Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Scott J. Greenberg, Steven Domanowski,
Stephen D. Silverman, Jonathan M. Dunworth
Email: sgreenberg@gibsondunn.com
sdomanowski@gibsondunn.com
silverman@gibsondunn.com
jdunworth@gibsondunn.com

32. *Successors and Assigns.* No party hereto shall have the right to assign its rights hereunder.

33. *Counterparts; Effectiveness.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same agreement. Provided the Effective Date has occurred, this Agreement shall become effective when each party hereto shall have received counterparts thereof signed by all the other parties hereto. The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or e-mail transmission. Such facsimile or e-mail signature shall be treated in all respects as having the same effect as an original signature.

34. *Preservation of Privilege.* In connection with any rights, claims, and Causes of Action that constitute assets of the Post-Effective Date Debtors and the Estates (for the avoidance of doubt, excluding the Acquired Assets), any attorney-client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether oral or written) in respect of those assets shall vest in the Plan Administrator. The Plan Administrator shall seek to preserve and protect all applicable privileges and work-product relating to the Claims reconciliation process and any Causes of Action of the Post-Effective Date Debtors and the Estates, including but not limited to any attorney-client privilege or work product privilege attaching to any documents or communications (whether written or oral). The Plan Administrator's receipt of such information shall not waive any such privileges, and all such privileges are expressly preserved, *provided*, for the avoidance of doubt, upon the Effective Date, such privileges shall belong to the Plan Administrator and shall be waivable by the Plan Administrator.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers.

DEBTORS:

By:

Name: Victor Semah
Title: Chief Legal Officer

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers.

PLAN ADMINISTRATOR:

By: PIRINATE Consulting Group, LLC

Name: Eugene I. Davis
Title: Chairman and Chief Executive Officer

Exhibit Ea

Redline to Previously Filed Plan Administrator Agreement

PLAN ADMINISTRATOR AGREEMENT

This Plan Administrator Agreement (the “**Agreement**”) is made January [12], 2023, by and among Cyxtera Technologies, Inc.; Cyxtera Communications, LLC; Cyxtera Canada TRS, ULC; Cyxtera Canada, LLC; Cyxtera Communications Canada, ULC; Cyxtera Data Centers, Inc.; Cyxtera DC Holdings, Inc.; Cyxtera DC Parent Holdings, Inc.; Cyxtera Digital Services, LLC; Cyxtera Employer Services, LLC; Cyxtera Federal Group, Inc.; Cyxtera Holdings, LLC; Cyxtera Management, Inc.; Cyxtera Netherlands B.V.; Cyxtera Technologies Maryland, Inc.; and Cyxtera Technologies, LLC (each a “**Debtor**” and collectively, the “**Debtors**”) and PIRAINATE Consulting Group, LLC, as administrator ~~of the Plan~~ (the “**Plan Administrator**”) under the *Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 694] (as may be altered, amended, or modified from time to time, the “**Plan**”). This Agreement sets forth, among other things, the scope of the services to be provided by the Plan Administrator. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the ~~*Third Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 649] (as may be altered, amended, or modified from time to time, the “**Plan**”)~~⁺Plan.

RECITALS:

A. WHEREAS, on June 4, 2023 (the “**Petition Date**”), the Debtors commenced with the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”) voluntary cases (the “**Chapter 11 Cases**”) pursuant to chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

B. WHEREAS, on November ~~213~~, 2023, the Debtors filed the Plan~~, and by the *Revised Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Joint Plan of Reorganization of Cyxtera Technologies, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 Of the Bankruptcy Code* entered on November 17, 2023 [Docket No. 718] (the “**Confirmation Order**”)~~, the Bankruptcy Court confirmed the Plan.

C. WHEREAS, by the Confirmation Order, the Bankruptcy Court, among other things, authorized and approved the Sale Transaction.

D. WHEREAS, the Plan became effective on January [12], 2023 (the “**Effective Date**”).

~~E.~~ WHEREAS, pursuant to the Plan, as of the Effective Date and solely in the event the Sale Transaction is consummated, the Plan Administrator will be appointed as Plan Administrator to implement the Plan, make distributions to Holders of certain Allowed Claims, and wind down, dissolve, and liquidate the Debtors’ Estates, in each case, for the benefit of the Holders of Allowed Claims other than Holders of General Unsecured Claims (the “**Beneficiaries**”).

⁺Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

F. WHEREAS, the Sale Transaction closed and was consummated on January [12], 2023.

~~DG.~~ WHEREAS, pursuant to the Plan, ~~once appointed,~~ the Plan Administrator ~~shall have~~has the authority and right on behalf of the Post-Effective Date Debtors, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement the provisions of the Plan.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

1. *Acceptance of Appointment.* The Debtors hereby appoint PIRINATE Consulting Group, LLC to serve as Plan Administrator, and PIRAINATE Consulting Group, LLC accepts its appointment as Plan Administrator and agrees to oversee and provide the services to be provided by the Plan Administrator pursuant to the Plan and the Confirmation Order, and as set forth herein (the “*Services*”). Notwithstanding the date of execution of this Agreement, this Agreement shall only become effective on the Effective Date ~~of the Plan.~~

2. *Duties, Powers, and Rights of Plan Administrator.* From and after the Effective Date, but subject to the Plan, the Plan Administrator shall act for the Post-Effective Date Debtors and the Beneficiaries in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof. The Plan Administrator shall have all duties, powers, and rights set forth herein, in the Plan and in the Confirmation Order, including the following:

(i) open and maintain bank accounts on behalf of or in the name of the Post-Effective Date Debtors and designate additional authorized signers on bank accounts as may be necessary (other than any Professional Fee Escrow Account), calculate and make distributions to Beneficiaries, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves (other than on account of General Unsecured Claims and/or any Professional Fee Escrow Account), in the name of the Post-Effective Date Debtors;

(ii) (+) subject to Bankruptcy Court approval when necessary, except to the extent Claims have been previously Allowed, control and effectuate the Claims reconciliation process, including to object to, seek to subordinate, reclassify, compromise or settle any and all Claims ~~or Interests~~ against ~~or in~~ the Debtors, other than ~~with respect to~~ the General Unsecured Claims;

(iii) (+) following the Effective Date, the Plan Administrator, or one or more designees thereof, shall serve as the member(s) or director(s) of any such ~~dissolved~~ board of the Post-Effective Date Debtors in the event that the Plan Administrator deems doing so necessary at any time following the Effective Date in order to effectuate the provisions of the Plan. The Plan Administrator shall be authorized to file on behalf of the Post-Effective Date Debtors, certificates of dissolution and any and all other corporate and company documents necessary to effectuate the Wind Down without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, the board of directors, or board of directors or similar governing body of the Debtors or Post-Effective Date Debtors; provided that pursuant

to the Plan, upon the filing by the Plan Administrator of a certification with the Bankruptcy Court that all distributions have been made, all of its duties under the Plan and the Purchase Agreement have been completed, and entry of a final decree closing the last of the Chapter 11 Cases, the Post-Effective Date Debtors shall be deemed to be dissolved without any further action by the Plan Administrator or the Post-Effective Date Debtors;

(iv) ~~(iii)~~ make distributions to ~~Holders of Allowed Claims~~the Beneficiaries in accordance with the Plan,~~other than with respect to Holders of Allowed General Unsecured Claims~~ (unless otherwise directed by the Bankruptcy Court);

(v) withhold from the amount distributable to any Beneficiary such amount as may be sufficient to pay any tax or other charges which the Plan Administrator has determined, in its reasonable discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision thereof;

(vi) ~~(iv)~~ exercise its reasonable business judgment to effectuate the Wind Down, sell, liquidate, operate, use, acquire, or dispose of property (including the liquidation, sale and/or abandonment of the remaining assets after consummation of the Sale Transaction) of the Post-Effective Date Debtors under the Plan and in accordance with applicable law as necessary to maximize distributions to ~~Holders of Allowed Claims~~the Beneficiaries;

(vii) ~~(v)~~ prepare, file, and prosecute any necessary filings and/or pleadings with the Bankruptcy Court to carry out the duties of the Plan Administrator as described herein;

(viii) ~~(vi)~~ subject in all respects to Articles IV.E and VIII of the Plan and to the extent not otherwise expressly waived relinquished, exculpated, released, compromised, or settled, prosecute all Causes of Action retained by the Post-Effective Date Debtors after the Effective Date on behalf of the Post-Effective Date Debtors, elect not to pursue any such Causes of Action, and determine whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action, as the Plan Administrator may determine is in the best interests of the Post-Effective Date Debtors' and the Estates;

(ix) ~~(vii)~~ make payments to ~~existing retained professionals (consistent with the terms of any Bankruptcy Court order approving such retention and subject to any applicable Bankruptcy Court approval requirements), as well as other~~the AHG Advisors in accordance with the Plan and to any professionals who may be engaged by the Plan Administrator after the Effective Date;

(x) ~~(viii)~~ retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals and consultants to assist in performing its duties under the Plan and in the Wind Down of the Estates pursuant to Section 5 hereof;

(xi) ~~(ix)~~ appoint officers as necessary to effectuate the Wind Down in accordance with the Plan;

(xii) ~~(x)~~ maintain the books and records and accounts of the Debtors and the Post-Effective Date Debtors;

(xiii) ~~(xi)~~ incur and pay, reasonable and necessary documented expenses in connection with the preparation for and/or the performance of duties under the Plan, including the reasonable and documented fees and expenses of ~~p~~Professionals retained by the Plan Administrator, whether such fees and expenses are incurred before or after the Effective Date;

(xiv) ~~(xii)~~ prepare, or cause to be prepared, and file or cause to be filed, as necessary, all final or otherwise required federal, state, and local tax returns for the Debtors and pay the tax liabilities of the Debtors or Post-Effective Date Debtors due and payable after the Effective Date;

(xv) ~~(xiii)~~ as applicable, (a) seek a determination of tax liability under section 505 of the Bankruptcy Code, (b) prepare and file any and all informational returns, reports, statements, returns or disclosures relating to the Debtors and the Post-Effective Date Debtors that are required thereunder, by any Governmental Unit or applicable law, (c) make tax elections for and on behalf of the Post-Effective Date Debtors, and (d) seek any tax refunds that may be available to the Post-Effective Date Debtors;

(xvi) require any Beneficiary to furnish to the Plan Administrator (i) its social security number or employer or taxpayer identification number as assigned by the IRS and (ii) the original Form W-8 or copy of Form W-9, as applicable, as completed by each Beneficiary, and the Plan Administrator may condition any distribution to any Beneficiary upon the receipt of such information;

(xvii) ~~(xiv)~~ pay statutory fees and file reports in accordance with Article XII.D of the Plan; and

(xviii) ~~(xv)~~ perform other duties and functions that are consistent with the implementation of the Plan.

3. *Reporting by the Plan Administrator.* On a semiannual basis, the Plan Administrator shall provide or make available a written report and account to the ~~AHG (or any entity that was a member thereof before the Effective Date)~~ then current members of the AHG, which report and account sets forth (i) the financial statements of the Post-Effective Date Debtors at the end of each period and (ii) the receipts and disbursements of the Post-Effective Date Debtors for such period. Notwithstanding, and without limitation of, the foregoing, the Plan Administrator shall respond to reasonable requests for information regarding distributions, the Wind-Down and the Claims reconciliation process that may be made by the AHG Advisors.

4. *No Other Duties.* Other than the duties and obligations of the Plan Administrator specifically set forth in this Agreement, the Plan, or the Confirmation Order, the Plan Administrator shall have no duties or obligations of any kind or nature with respect to its position.

5. *Retention of Professionals.* The Plan Administrator may hire (or continue to engage previously hired Debtor professionals) attorneys, accountants, and other professionals ~~as may be~~ consultants, or other advisors (collectively, "Professionals") as may be necessary, required or appropriate in connection with its duties herein, and pay reasonable compensation to such ~~advisors~~ Professionals. Any ~~p~~Professionals retained by the Plan Administrator, ~~—~~ shall be entitled to reasonable compensation for services rendered and reimbursement of reasonable and

documented fees, costs and expenses incurred. The payment of the fees, costs and expenses of the Plan Administrator and its retained ~~p~~Professionals, whether incurred before or after the Effective Date, shall be made after the Effective Date in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court, provided, however, that any disputes related to such fees, costs and expenses shall be brought before the Bankruptcy Court.

6. *Insurance.* The Plan Administrator shall be authorized to obtain all reasonably necessary insurance coverage and shall be reimbursed pursuant to Section 8 hereof.

7. *Fees.* The fees of the Plan Administrator shall be \$25,000.00 per month until ~~this Agreement~~the date its appointment is terminated pursuant to Sections 9 and 10 hereof (collectively, the "*Fees*"). The initial payment of \$25,000.00 shall be made within ten (10) business days following the Effective Date, and each successive payment shall be made on the same date (or next subsequent business day) of each month going forward. The Fees shall be payable out of the Wind-Down Reserve.

8. *Expenses.* In performance of the Services, the reasonable and documented out of pocket expenses of the Plan Administrator, including, for the avoidance of doubt, any insurance policy obtained by the Plan Administrator in connection with the Services, shall be reimbursed, payable from the Wind-Down Reserve.

9. *Service of Plan Administrator.* The Plan Administrator shall serve until the earlier to occur of (a) (i) the Estates have been fully administered and all of the Post-Effective Date Debtors' assets have been liquidated or abandoned, (ii) all duties and obligations of the Plan Administrator have been fulfilled, (iii) all distributions required to be made under the Plan and this Agreement have been made, and (iv) a Final Order has been entered by the Bankruptcy Court closing the last of the Chapter 11 Cases; or (b) the Plan Administrator's death, resignation, dissolution, incapacity or removal. Subject to Section 10~~1~~, the Plan Administrator may resign at any time by giving at least forty-five (45) days' prior written notice of its intention to do so ("*Resignation Notice*") to the ~~United States~~U.S. Trustee, the Bankruptcy Court ~~and~~, the AHG Advisors, and counsel to the Debtors (Kirkland & Ellis LLP). Upon the occurrence of any event described in the foregoing clause (a) or (b), all responsibilities of the Plan Administrator relating to the Debtors and Post-Effective Date Debtors or arising under the Plan, the Confirmation Order and/or this Agreement shall terminate and no further Fees shall be due to the Plan Administrator, provided that (a) the Plan Administrator shall be entitled to the Fees pro-rated through, and reimbursement of reasonable expenses incurred prior to, such termination in accordance with Sections 7 and 8 of this Agreement, and (b) all of the Plan Administrator's rights and protections with respect to acts or omissions occurring prior to the effectiveness of such termination shall survive.

10. *Removal of Plan Administrator.* The Plan Administrator may be removed and replaced at any time for cause. Any Beneficiary, on notice and hearing before the Bankruptcy Court, may seek removal of the Plan Administrator for cause.²¹ The Plan Administrator shall be

²¹ For purposes of this Agreement, the term "for cause" shall mean: (i) the ~~commission~~conviction of a crime under the laws of the United States or any state thereof involving fraud, theft, false statements or other similar acts, or the commission of any crime that is a felony (or a comparable classification in a jurisdiction that does not use such

entitled to recover its ~~reasonable and documented~~ fees and expenses (including legal fees) from any party that unsuccessfully attempts to remove the Plan Administrator for cause. Such removal, if any, shall be effective on the date specified in the Final Order approving removal by the Bankruptcy Court. ~~Notwithstanding the removal of the Plan Administrator pursuant to this Section 10, the rights of the resigning Plan Administrator under this Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Plan Administrator following the effectiveness of such resignation.~~

11. *Resignation of Plan Administrator.* In the event of a resignation, the Plan Administrator shall continue to serve until the earlier to occur of (a) the date that is forty-five (45) days after the date ~~such~~ the Resignation Notice is filed with the Bankruptcy Court and served on the ~~United States Trustee and the advisors to the AHG~~ U.S. Trustee, the AHG Advisors, and counsel to the Debtors (Kirkland & Ellis LLP), and (b) a successor Plan Administrator is identified and accepts the appointment as Plan Administrator and notice is provided to the Bankruptcy Court, U.S. Trustee, the AHG Advisors and counsel to the Debtors (Kirkland & Ellis LLP) of such successor Plan Administrator. Notwithstanding the resignation of the Plan Administrator pursuant to this Section 11, the rights of the resigning Plan Administrator under this Agreement with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning Plan Administrator following the effectiveness of such resignation. Notwithstanding any other provision herein, upon the resignation of the Plan Administrator (other than a resignation for cause), the ~~undersigned~~ Plan Administrator shall reasonably assist and cooperate in effecting the assumption of the duties by any successor Plan Administrator ~~and continue to serve in such capacity until such time as (a) a successor Plan Administrator is identified and accepts the appointment as Plan Administrator and (b) notice is provided to the Bankruptcy Court of such successor Plan Administrator pursuant to this Section 11; provided that in no event shall the outgoing Plan Administrator be required to continue to serve for a period longer than forty five (45) days following its resignation.~~

12. *Appointment of Successor Plan Administrator.* Upon ~~the death, resignation, or dissolution, incapacity or removal~~ of a Plan Administrator, the Plan Administrator shall recommend ~~a successor Plan Administrator, which is acceptable to Beneficiaries that hold a majority to the Holders~~ of the First Lien Claims, ~~to be appointed by a successor Plan Administrator and provide notice of the same to the AHG Advisors and counsel to the Debtors (Kirkland & Ellis LLP). Upon the consent of the Required Consenting Term Lenders and the acceptance of the appointment by the successor Plan Administrator, the Plan Administrator shall file with the Bankruptcy Court a notice of the appointment of such successor Plan Administrator, which appointment shall be effective as of the date the notice is filed, without any further act or need for an order of the Bankruptcy Court, and the successor Plan Administrator shall become fully vested with all of the rights, powers, duties and obligations of the predecessor.~~ Upon the ~~death, resignation, dissolution,~~ incapacity or removal of a Plan Administrator, the Bankruptcy Court upon request of any Beneficiary or on its own motion shall appoint a successor Plan Administrator on an interim or permanent basis, provided that any successor Plan Administrator

terms) under such laws; or (ii) the willful, grossly negligent or repeated failure to perform any material employment-related duties as determined by Final Order of the Bankruptcy Court.

must be acceptable to the Required Consenting Term Lenders. Any successor Plan Administrator so appointed shall consent to and accept in writing the terms of this Agreement and agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Plan Administrator. Upon the appointment of a successor Plan Administrator, the predecessor Plan Administrator shall have no further liability or responsibility with respect to the Debtors or Post-Effective Date Debtors. A successor Plan Administrator shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor, and no successor Plan Administrator shall be in any way liable for the acts or omissions of any predecessor Plan Administrator, unless a successor Plan Administrator expressly assumes such responsibility. A predecessor Plan Administrator shall have no liability for the acts or omissions of any immediate or subsequent successor Plan Administrator for any events or occurrences subsequent to the cessation of its role as Plan Administrator.

13. *Powers and Duties of Successor Plan Administrator.* For the avoidance of doubt, a successor Plan Administrator shall have all the rights, privileges, powers, and duties of its predecessor under this Agreement and the Plan.

~~14. *Indemnification.* In addition to any other indemnification provided to the Plan Administrator, the Plan Administrator (in its capacity as such) shall be indemnified and held harmless as set forth in Article IV.D.4 of the Plan. Such indemnification shall survive the termination of this Agreement.~~

154. *Plan Provisions.* In connection with all actions taken in its capacity as Plan Administrator, the Plan Administrator shall be entitled to rely upon the applicable exculpation, release, and indemnification and limitation of liability provisions set forth in any organizational document of the Debtors, this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein, the Plan Administrator shall not be entitled to any release, exculpation, or indemnification if the Plan Administrator is determined to have engaged in fraud, gross negligence, or willful misconduct as determined by a Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The applicable exculpation, release, and indemnification and limitation of liability provisions set forth in the Plan, the Confirmation Order and this Agreement (including, for the avoidance of doubt, Sections 14 through and including 19 herein) shall survive the termination of (a) this Agreement or consummation of the Plan, and (b) any Indemnified Party from the capacity for which it was deemed indemnified, and shall remain available to and binding upon any Indemnified Party and any estate of any decedent Indemnified Party.

15. *Exculpation.* None of the Plan Administrator or its Professionals, agents, or any of their respective directors, officers, affiliates, employees, employers, successors, assigns, agent, or representatives (collectively, the “Indemnified Parties”) shall be liable for any losses, claims, damages, liabilities, obligations settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including, without limitation, reasonable legal or other professional fees and disbursements and the costs and expenses of investigating, analyzing and responding to claims, of any kind or nature (each a “Loss” and collectively, “Losses”), whether or not in connection with litigation in which any Indemnified Parties is a party or enforcing this Agreement (including this exculpation provision), incurred,

caused by, relating to, based upon, or arising out of (directly or indirectly) the Indemnified Parties' execution, delivery, and acceptance of, or performance or nonperformance of their powers, duties, and obligations under, this Agreement, the Plan, the Confirmation Order, any other order of the Bankruptcy Court, any applicable law or as may arise by reason of any action, omission, or error of an Indemnified Party, except to the extent it is finally determined by the Bankruptcy Court to be based upon gross negligence, willful misconduct, or fraud of such Indemnified Party, *provided that in no event* will any such Person be liable for punitive, exemplary, consequential, or special damages under any circumstances. Every act taken or omitted, power exercised, or obligation assumed by or on behalf of the Debtors, the Post-Effective Date Debtors, the Estates or any of the Indemnified Parties pursuant to the provisions of this Agreement, the Plan, the Confirmation Order or any other order of the Bankruptcy Court shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Indemnified Parties acting for and on behalf of the Debtors, the Post-Effective Date Debtors and the Estates and not otherwise, *provided, however*, that none of the foregoing Indemnified Parties are deemed to be responsible for any other such Indemnified Parties' actions or inactions.

16. *Reliance by Plan Administrator.* To the fullest extent permitted by applicable law, the Plan Administrator may rely, and shall be fully protected in acting or refraining from acting if it relies, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Plan Administrator reasonably believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of e-mails or facsimiles, to have been sent or the Plan Administrator reasonably believes to have been sent by the proper party or parties, and the Plan Administrator may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. To the fullest extent permitted by applicable law, the Plan Administrator may consult with counsel, accountants, financial advisors, and other Professionals with respect to matters in their area of expertise, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or not taken by the Plan Administrator (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). To the fullest extent permitted by applicable law, the Plan Administrator shall be entitled to rely upon the advice of such Professionals in acting or failing to act, and shall not be liable for any act taken or not taken in reliance thereon (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). Notwithstanding the foregoing, the Plan Administrator shall be under no obligation to consult with any Professionals and its determination not to do so shall not result in the imposition of liability on the Plan Administrator unless such determination is based on willful misconduct, gross negligence, or fraud. To the fullest extent permitted by applicable law, the Plan Administrator shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning its rights or duties under or in connection with this Agreement, the Plan, or any other document executed in connection herewith or therewith, and the Plan Administrator shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon. For the avoidance of doubt, to the fullest extent permitted by applicable law, the Plan Administrator and the other Indemnified Parties shall be entitled to rely upon written information previously generated by the Debtors, the Estates or their professional and advisors,

and any action taken or omitted to be taken by the Indemnified Parties in reliance thereon or with the approval of a court of competent jurisdiction will conclusively be deemed not to constitute gross negligence, willful misconduct, or fraud.

17. *Limitation on Liability.* The Plan Administrator shall be deemed a judicial officer for purposes of immunity from civil action. No Holder of a Claim or Equity Interest or representative thereof shall have or pursue any Cause of Action against the Plan Administrator or any other Indemnified Parties for taking any action in accordance with, or to implement the provisions of, the Plan, this Agreement, the Confirmation Order, or any order of the Bankruptcy Court. Persons and Entities dealing with the Plan Administrator shall have recourse only and shall look only to the Post-Effective Date Debtors' assets to satisfy any Losses or other liability incurred by the Indemnified Parties to such Person or Entity in carrying out the terms of this Agreement, the Plan, and the Confirmation Order and the Indemnified Parties shall have no personal obligation to satisfy such liability. Notwithstanding anything contained in this Agreement, in no event shall will any Indemnified Parties be liable for punitive, exemplary, consequential, or special damages under any circumstances.

18. *Indemnification.* The Post-Effective Date Debtors and their Estates shall, to the fullest extent permitted by law, indemnify the Indemnified Parties for, and shall defend and hold them harmless against, any Loss incurred (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction), in connection with or arising from the acceptance, administration, exercise, and performance of their duties under the Plan, this Agreement or the Confirmation Order or in connection with the administration of the Estates and/or the Wind Down. An act or omission taken with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence or willful misconduct. In addition, the Post-Effective Date Debtors and the Estates shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including reasonable and documented attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Post-Effective Date Debtors, the Estates or the implementation or administration of the Plan (other than for acts or omissions constituting fraud, gross negligence, or willful misconduct of the Plan Administrator as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction). To the extent an Indemnified Party asserts a claim for indemnification hereunder, the reasonable and documented legal fees and related costs incurred by counsel to such party and/or Plan Administrator in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced by the Post-Effective Date Debtors and the Estates (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined through a final non-appealable order that such Indemnified Party is not entitled to be indemnified therefor). To the extent the Post-Effective Date Debtors indemnify, defend, and hold harmless any Indemnified Parties as provided above, the reasonable and documented legal fees and related costs incurred by counsel to the Plan Administrator in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as an expenses of the Post-Effective Date Debtors prior and superior to any other rights of Beneficiaries to receive distributions under the Plan. For the avoidance of doubt, the reasonable and documented costs and expenses incurred in enforcing the right of indemnification shall be paid by the

Post-Effective Date Debtors. In addition to the indemnification provided hereunder or any other indemnification provided to the Plan Administrator, the Plan Administrator (in its capacity as such) shall be indemnified and held harmless as set forth in Article IV.D.4 of the Plan.

19. *Burden of Proof.* In any proceeding brought by any of the Post-Effective Date Debtors or the Estates, or any other Person or Entity who is bound by this Agreement challenging any action, determination or failure to act of any of the Indemnified Parties in discharge of their duties under this Agreement or the Plan, the Person or Entity bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or failure to act constituted gross negligence, willful misconduct, or fraud. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, each determination, action or failure to act of the Indemnified Parties in the discharge of their duties under this Agreement or the Plan is, to the extent consistent with this Agreement or the Plan, hereby deemed to not constitute a breach of this Agreement, the Plan or any duty hereunder, thereunder or existing at law, in equity or otherwise.

20. *Reliance by Entities Dealing with the Plan Administrator.* In the absence of actual knowledge to the contrary, any Person or Entity dealing with the Post-Effective Date Debtors or the Estates shall be entitled to rely on the authority of the Plan Administrator to act on behalf of the Post-Effective Date Debtors or the Estates and shall have no obligation to inquire into the existence of such authority. Each Person or Entity who is bound by this Agreement hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person or Entity to contest, negate or disaffirm any action of the Plan Administrator in connection with any such dealing. Each and every certificate, document or other instrument executed on behalf of the Post-Effective Date Debtors or the Estates by the Plan Administrator or its representative or agents shall be conclusive evidence in favor of any and every Person or Entity relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person or Entity executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Post-Effective Date Debtors or the Estates and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon Post-Effective Date Debtors and the Estates.

21. *No Successor Liability.* Except as otherwise expressly provided in the Plan and Confirmation Order, the Plan Administrator (i) is not, and shall not be deemed to assume, agree to perform, pay, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other Person relating to or arising out of the operations or the assets of the Debtors prior to the Effective Date; (ii) is not, and shall not be, successor to the Debtors by any reason of any theory of law or equity or responsible for the knowledge or conduct of any Debtor prior to the Effective Date; and (iii) shall not have any successor or transferee liability of any kind or character.

1722. *Effect of Termination; Survival.* Upon termination of this Agreement, the Plan Administrator shall have no further duties or obligations hereunder or as Plan Administrator, except as specifically provided herein. For the avoidance of doubt, any other provision in the

Agreement, which, by its terms, specifically survives termination of the Agreement, shall survive termination of this Agreement.

~~18~~23. *Headings*. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or of any term or provision hereof.

~~19~~24. *Amendment; Waiver*. The Plan Administrator, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order, provided that the Plan Administrator may make any non-material modification, supplement, or amendment to this Agreement to clarify any ambiguity or inconsistency or render this Agreement in compliance with its stated purposes so long as such modification, supplement, or amendment is approved by the Required Consenting Term Lenders and prior notice is provided to counsel to the Debtors (Kirkland & Ellis LLP). No failure by any party hereto to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

~~20~~5. *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the rules of conflict of laws of the State of New York or any other jurisdiction.

~~21~~6. *Retention of Jurisdiction*. The Bankruptcy Court shall retain jurisdiction over this Agreement.

~~22~~7. *Conflict with Plan*. This Agreement incorporates and is subject to the provisions of the Plan. To that end, the Plan Administrator shall have full power and authority to take any action consistent with the purposes and provisions of the Plan. In the event that the provisions of this Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control. Notwithstanding anything to the contrary contained herein, all fees, costs, expenses, and payments hereunder shall be subject in all respects to the provisions of the Plan.

~~23~~8. *Severability*. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make such provision enforceable, or, if necessary, this Agreement shall be deemed to be amended to delete the unenforceable provision or portion thereof. In the event any provision is deleted or amended, the remaining provisions shall remain in full force and effect. Notwithstanding the foregoing, the parties recognize and agree that this Agreement is to be interpreted and applied in such manner as to, as nearly as possible, give effect to the parties' intent to all provisions hereof, including, without limitation, such provisions as may be declared to be unenforceable.

29. *Waiver*. No failure by the Plan Administrator to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

30. Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

31. Limitation of Benefits. Except as otherwise specifically provided in this Agreement, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

324. Integration. This Agreement (together with the Plan and the Confirmation Order) sets forth in full the terms of agreement between the parties with respect to the transactions contemplated herein, superseding all other discussions, promises, representations, warranties, agreements and understandings, whether written or oral, between the parties with respect thereto.

2533. Notices. Unless otherwise expressly specified or permitted by the terms of the Plan, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or email transmission (and confirmed by mail), in any such case addressed as follows:

If to the Plan Administrator: PIRINATE Consulting Group, LLC
5 Canoe Brook Drive
Livingston, New Jersey 07039
Attention: Eugene Davis
Email address: genedavis@pirinateconsulting.com

With a copy to (which shall not constitute notice):

Halperin Battaglia Benzija, LLP
40 Wall Street
New York, NY 10005
Attention: Alan D. Halperin
Email address: ahalperin@halperinlaw.net

If to the Post-Effective Date Debtors: Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Edward O. Sassower, Christopher Marcus,
Derek I. Hunter, Brian Nakhaimousa
E-mail addresses: esassower@kirkland.com,
christopher.marcus@kirkland.com
derek.hunter@kirkland.com
brian.nakhaimousa@kirkland.com

If to the AHG or the AHG Advisors: Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166

Attention: Scott J. Greenberg, Steven Domanowski,
Stephen D. Silverman, [Jonathan M. Dunworth](mailto:Jonathan.M.Dunworth@gibsondunn.com)
Email: sgreenberg@gibsondunn.com
sdomanowski@gibsondunn.com
silverman@gibsondunn.com
jdunworth@gibsondunn.com

326. *Successors and Assigns.* No party hereto shall have the right to assign its rights hereunder.

2733. *Counterparts; Effectiveness.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same agreement. Provided the Effective Date has occurred, this Agreement shall become effective when each party hereto shall have received counterparts thereof signed by all the other parties hereto. The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or e-mail transmission. Such facsimile or e-mail signature shall be treated in all respects as having the same effect as an original signature.

34. *Preservation of Privilege.* In connection with any rights, claims, and Causes of Action that constitute assets of the Post-Effective Date Debtors and the Estates (for the avoidance of doubt, excluding the Acquired Assets), any attorney-client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether oral or written) in respect of those assets shall vest in the Plan Administrator. The Plan Administrator shall seek to preserve and protect all applicable privileges and work-product relating to the Claims reconciliation process and any Causes of Action of the Post-Effective Date Debtors and the Estates, including but not limited to any attorney-client privilege or work product privilege attaching to any documents or communications (whether written or oral). The Plan Administrator's receipt of such information shall not waive any such privileges, and all such privileges are expressly preserved, provided, for the avoidance of doubt, upon the Effective Date, such privileges shall belong to the Plan Administrator and shall be waivable by the Plan Administrator.

[Signature pages follow.]

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[Link-to-previous setting changed from off in original to on in modified.]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers.

DEBTORS:

By:

Name: Victor Semah

Title: Chief Legal ~~Counsel~~Officer

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[\[Signature Page to Plan Administrator Agreement\]](#)

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[Link-to-previous setting changed from off in original to on in modified.]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers.

PLAN ADMINISTRATOR:

By: PIRINATE Consulting Group, LLC

Name: Eugene I. Davis
Title: Chairman and Chief Executive Officer

[Different first page setting changed from on in original to off in modified.]

[\[Signature Page to Plan Administrator Agreement\]](#)