

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: Certain proceedings taken in the United  
States Bankruptcy Court for the District of  
Delaware with respect to IMRIS Inc.,  
IMRIS, Inc. and NeuroArm Surgical Ltd.,  
(Collectively, the "Chapter 11 Debtors")

Application of IMRIS, Inc. ("Applicant") under section 46 of the *Companies' Creditors  
Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

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**AMENDED AND RESTATED SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**Date of Hearing: Wednesday, June 3, 2015 at 2:00 p.m.  
Before: The Honourable Justice Dewar**

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**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

THE HONOURABLE MR. ) WEDNESDAY, THE 3<sup>RD</sup> DAY  
 ) OF JUNE, 2015; AND  
JUSTICE DEWAR ) THURSDAY, THE 11<sup>TH</sup> DAY  
 ) OF JUNE, 2015

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: Certain proceedings taken in the United  
States Bankruptcy Court for the District of  
Delaware with respect to IMRIS Inc.,  
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(Collectively, the "Chapter 11 Debtors")

Application of IMRIS, Inc. ("Applicant") under section 46 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

**AMENDED AND RESTATED SUPPLEMENTAL ORDER**  
**(FOREIGN MAIN PROCEEDING)**

**THIS APPLICATION**, made by IMRIS, Inc. ("**IMRIS US**" or "**Applicant**") in its capacity as the foreign representative (the "**Foreign Representative**") of the Chapter 11 Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for two Orders substantially in the forms attached to the Notice of Application, was heard this day at 408 York Avenue at Kennedy Street, in the City of Winnipeg, Manitoba.

**ON READING** the Notice of Application dated May 29, 2015, including the affidavit of Jay D. Miller sworn May 29, 2015, the affidavit of Bruce Darlington, sworn May 27, 2015, and the preliminary report of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as proposed information officer (~~the “**Information Officer**”~~) dated June 1, 2015, each filed, and counsel for the Applicant undertaking to file an affidavit verifying that the US Court orders attached as schedules A-K to the Notice of Application are true copies of orders which have been certified, and upon being provided with copies of the documents required by section 46 of the CCAA,

**AND UPON HEARING** the submissions of counsel for the Foreign Representative, counsel for FTI, and counsel to Deerfield Situations Fund L.P. as administrative agent and collateral agent to the lenders under the Senior Secured Super Priority Debtor-in-Possession Credit Agreement (the “**DIP Facility**”) dated May 26, 2015 (the “**DIP Lenders**”), no one else appearing although duly served, upon reading the affidavit of service of Kim Hamill, sworn June 1, 2015 and the affidavits of service of Jennifer A. Whincup sworn May 29, 2015 and June 1, 2015:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the materials filed in support of the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **INITIAL RECOGNITION ORDER**

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated June 3, 2015 (the "**Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

## **RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the District of Delaware made in the Chapter 11 Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) Joint Administration Order, attached as Schedule "A" to this Order;
- (b) Foreign Representative Order, attached as Schedule "B" to this Order;
- (c) Claims Agent Order, attached as Schedule "C" to this Order;
- (d) Pre-petition Wages Order, attached as Schedule "D" to this Order;
- (e) Prepetition Shipping Order, attached as Schedule "E" to this Order;
- (f) Customer Obligation Order, attached as Schedule "F" to this Order;
- (g) Post-Petition Operations Order, attached as Schedule "G" to this Order;

- (h) Insurance Order, attached as Schedule “H” to this Order;
- (i) Interim Prepetition Taxes Order, attached as Schedule “I” to this Order;
- (j) Interim Cash Management Order, attached as Schedule “J” to this Order;
- and
- (k) Interim DIP Facility Order, attached as Schedule “K” to this Order.;

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

6. **THIS COURT ORDERS** that until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Chapter 11 Debtors or the Foreign Representative, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Chapter 11 Debtors to carry on any business in Canada which that Chapter 11 Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Chapter 11 Debtors and affecting the Business in Canada, except with leave of this Court.

### **ADDITIONAL PROTECTIONS**

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for

the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Chapter 11 Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Chapter 11 Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

**OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court as deemed necessary with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order;
- (e) shall have the power to monitor the Chapter 11 Debtors' Canadian receipts and disbursements;



- (f) shall assist the Chapter 11 Debtors, to the extent required by the Chapter 11 Debtors under the DIP Facility, in its dissemination to the DIP Lenders and counsel to the DIP Lenders of financial and other information which may be used in these proceedings and in reporting to the DIP Lenders pursuant to the terms under the DIP Facility;
- (g) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) shall perform such other duties as are required by this Order or by the Court from time to time.

13. **THIS COURT ORDERS** that the Chapter 11 Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Chapter 11 Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be

deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Chapter 11 Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Chapter 11 Debtors are hereby authorized and

directed to pay the accounts of the Information Officer and counsel for the Information Officer on a monthly basis.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Manitoba Court of the Queen's Bench, and the accounts of the Information Officer, its counsel and counsel to the Chapter 11 Debtors in these proceedings shall not be subject to approval in the Foreign Proceeding.

#### **ADMINISTRATION CHARGE**

19. **THIS COURT ORDERS** that the Information Officer, counsel to the Information Officer, and counsel to the Chapter 11 Debtors, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of \$200,000.00 as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs [21] and [23] hereof.

#### **INTERIM FINANCING**

20. **THIS COURT ORDERS**, subject to further Order of this Court to be sought after the US Court enters a final order in respect of the DIP Facility, that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Charge**") on the Property in Canada, which DIP Lenders' Charge shall be consistent with

the liens and charges created by the interim order made in the Chapter 11 proceedings authorizing the Chapter 11 Debtors to obtain post-petition financing dated May 27, 2015 pursuant to the terms of the DIP Facility up to an aggregate amount of US\$5,363,413.00 provided however that the DIP Lenders' Charge with respect to the Property in Canada, shall have the priority set out in paragraphs [21] and [23] hereof, and further provided that the DIP Lenders' Charge shall not be enforced except with leave of this Court.

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

21. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lenders' Charge, as among them, shall be as follows:

First – Administration Charge to the maximum amount of \$200,000.00.

Second – DIP Lenders' Charge to the maximum amount of US\$5,363,413.00, or its equivalent in Canadian currency

22. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lenders' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lenders' Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests,

trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lenders' Charge, unless the Chapter 11 Debtors also obtain the prior written consent of the Information Officer and the DIP Lenders.

25. **THIS COURT ORDERS** that the Administration Charge and the DIP Lenders' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

26. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtor's interest in such real property leases.

#### **GENERAL**

27. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Chapter 11 Debtor, the Business or the Property.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory, governmental or administrative body having jurisdiction in Canada,

the United States or elsewhere, to give effect to this Order and to assist the Chapter 11 Debtors, the Information Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Information Officer and their respective agents, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Information Officer and their respective agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Guidelines for Court-to-Court Communications in Cross-Border Cases developed by the American Law Institute and attached as Schedule "L" hereto is adopted by this Court for the purposes of these recognition proceedings.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

33. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Central Daylight Time on the date of this Order.

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# Schedule "A"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: :  
 : Chapter 11  
 IMRIS, Inc. :  
 : Case No. 15-11133 (CSS)  
 :  
 : **Re: Docket No. 3**  
 Debtor. :  
 :  
 :  
 -----X

In re: :  
 :  
 IMRIS Inc. : Chapter 11  
 :  
 Debtor. : Case No. 15-11134 (CSS)  
 :  
 : **Re: Docket No. 3**  
 :  
 :  
 :  
 -----X

In re: :  
 : Chapter 11  
 NeuroArm Surgical Ltd. :  
 : Case No. 15-11135 (CSS)  
 :  
 : **Re: Docket No. 3**  
 Debtor. :  
 :  
 :  
 -----X

### **ORDER GRANTING MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR AN ORDER DIRECTING THE JOINT ADMINISTRATION OF THEIR CHAPTER 11 CASES**

This matter coming before the Court on the *Motion of the Debtors and Debtors in Possession for an Order Directing the Joint Administration of their Chapter 11 Cases* (the

“Motion”)<sup>1</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”); the Court having reviewed the Motion and the First Day Declaration; the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion was sufficient under the circumstances; and the Court having determined that good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED *as set forth herein*.
2. The above-captioned chapter 11 cases shall be consolidated for procedural purposes only and shall be administered jointly. The Clerk of the Court shall maintain one file and one docket for all of these jointly administered cases, which file and docket for each respective chapter 11 case shall be the file and docket for In re: IMRIS, Inc., Case No. 15-11133 (CSS).
3. Parties in interest are directed to use the Proposed Caption annexed hereto as Exhibit 1 when filing pleadings with the Court in the chapter 11 cases of the Debtors, indicating that the pleading relates to the jointly administered chapter 11 cases of “In re: IMRIS, Inc., *et al.*” The consolidated caption set forth in Exhibit 1 satisfies the requirements of section 342(c) of the Bankruptcy Code in all respects.
4. A docket entry shall be made on the docket in the chapter 11 cases of IMRIS Inc. and NASL substantially stating as follows:

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

An order has been entered in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the procedural consolidation and joint administration of the chapter 11 cases of IMRIS Inc., IMRIS, Inc. and NeuroArm Surgical Ltd. All further pleadings and other papers in this chapter 11 case shall be filed in, and all further docket entries shall be made in, Case No. 15-11133 (CSS) (IMRIS, Inc.).

5. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effectuating a substantive consolidation of the above-captioned chapter 11 cases or affect the obligation of each and every Debtor to pay quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. Sec. 1930(f) until the latter of the time a case is closed, dismissed, or converted.

6. This Court shall retain jurisdiction over any and all matters arising from the interpretations or implementation of this Order.

Dated: 5/27, 2015  
Wilmington, Delaware



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The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

**EXHIBIT 1**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
In re: :  
: Chapter 11  
IMRIS, Inc., *et al.*,<sup>1</sup> :  
: Case No. 15-11133 (CSS)  
: Debtors. : (Jointly Administered)  
: :  
-----X

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

# Schedule "B"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
In re: : Chapter 11  
IMRIS, Inc., et al.,<sup>1</sup> : Case No. 15-11133 (CSS)  
Debtors. : (Jointly Administered)  
: Re: Docket No. 13  
-----X

CERTIFIED:  
AS A TRUE COPY;  
ATTEST:

DAVID D BIRD CLERK  
U.S. BANKRUPTCY COURT

BY:  Deputy Clerk 5/28/15

### ORDER GRANTING MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING IMRIS, INC. TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTORS' ESTATES

This matter coming before the Court on the *Motion of the Debtors for Entry of an Order Authorizing IMRIS, Inc. to Act as Foreign Representative on Behalf of the Debtors' Estates* (the "Motion"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion and

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is (i) in the best interests of the Debtors, their estates and their creditors and (ii) necessary to prevent immediate and irreparable harm to the Debtors, their estates and their employees; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

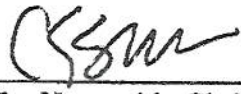
1. The Motion is GRANTED, as set forth herein.
2. IMRIS, Inc. is authorized to act as Foreign Representative on behalf of each of the Debtors' estates in any judicial or other proceeding in a foreign country, including the Canadian Proceedings, and may act in any way permitted by applicable foreign law, including, without limitation, (i) seeking recognition of the Debtors' chapter 11 cases in the Canadian Proceedings, (ii) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates, and (iii) seeking any other appropriate relief from the Canadian Court that IMRIS, Inc. deems just and proper in furtherance of the protection of the Debtors' estates.
3. The Debtors are authorized to pay certain fees and expenses incurred prior to the Petition Date by counsel to the Foreign Representative (DLA Piper (Canada) LLP) and the Information Officer (FTI Consulting Canada Inc.) and its counsel; provided, however, that the aggregate amount of such payment shall not exceed \$50,000.
4. This order is without prejudice to the Debtors' obligations to comply with the applicable law of a foreign country in seeking recognition as a foreign representative.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.



6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation, interpretation and/or enforcement of this Order.

Dated: 5/27, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge



# Schedule "C"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 :  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 : (Jointly Administered)  
 Debtors. :  
 : Re: Docket No. 5  
 :  
 -----X

### **ORDER APPROVING DEBTORS' APPLICATION FOR ENTRY OF AN ORDER APPOINTING KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, AND NOTICING AGENT NUNC PRO TUNC TO THE PETITION DATE**

This matter coming before the Court on the *Debtors' Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the "Section 156(c) Application"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Section 156(c) Application, the Miller Declaration and the Gershbein Declaration and having considered the statements of counsel and the evidence adduced with respect to the Section 156(c) Application at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Section 156(c) Application and the Hearing was sufficient

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Section 156(c) Application.

under the circumstances; after due deliberation, the Court having determined that the relief requested in the Section 156(c) Application is necessary and essential for the Debtors' chapter 11 cases and such relief is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Letter attached to the Section 156(c) Application, the Section 156(c) Application is approved solely as set forth in this Order.
2. The Debtors are authorized to retain KCC, effective as of the Petition Date, under the terms of the Services Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these cases, and all related tasks, all as described in the Section 156(c) Application.
3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.
4. KCC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.
5. KCC is authorized to take such other action to comply with all duties set forth in the Section 156(c) Application.
6. The Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without

the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices; and it is further

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. KCC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Services Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Services Agreement.

11. The Debtors shall indemnify claims and noticing agent under the terms of the Services Agreement.

12. KCC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.

13. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Services Agreement as modified by this Order.

14. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Services Agreement (as modified by this Order), including without limitation the advancement of defense costs, KCC must file an application therefore in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.

15. In the event KCC is unable to provide the services set out in this order, KCC will immediately notify the Clerk and Debtors' attorney and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' attorney.

16. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

17. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Section 156(c) Application.

18. Notwithstanding any term in the Services Agreement to the contrary, KCC's liability shall not be limited to the amount paid or payable under the Services Agreement during these chapter 11 cases.

19. KCC shall not cease providing claims processing services during the case(s) for any reason, including nonpayment, without an order of the Court.

20. In the event of any inconsistency between the Services Agreement, the Section 156(c) Application and the Order, the Order shall govern.

21. Notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: 5/27, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "D"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 : (Jointly Administered)  
 Debtors. :  
 : **Re: Docket No. 7**  
 :  
 -----X

**ORDER GRANTING MOTION OF DEBTORS AND DEBTORS IN POSSESSION  
 FOR ENTRY OF AN ORDER (I) AUTHORIZING THEM TO PAY CERTAIN  
 EMPLOYEE OBLIGATIONS AND MAINTAIN AND CONTINUE EMPLOYEE  
 BENEFITS AND PROGRAMS, AND (II) AUTHORIZING BANKS TO HONOR AND  
 PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

This matter coming before the Court on the *Motion of Debtors and Debtors in Possession for Entry of an Order (i) Authorizing Them to Pay Certain Employee Obligations and Maintain and Continue Employee Benefits and Programs, and (ii) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations* (the "Motion"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012, (ii) venue is

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is (i) in the best interests of the Debtors, their estates and their creditors and (ii) necessary to prevent immediate and irreparable harm to the Debtors, their estates and their Employees; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Debtors are authorized, but not directed, in the Debtors' sole discretion, to pay the Prepetition Compensation, PTO Payments, Prepetition Business Expenses, Payroll Taxes, Benefits Deductions and Prepetition Processing Costs (collectively, the "Prepetition Employee Amounts") that have accrued but remain unpaid (including those amounts that remain unpaid as a result of dishonoring of checks due to the filing of these chapter 11 cases) as of the Petition Date to or for the benefit of their Employees; provided, however, that the Debtors shall not pay any of the following Prepetition Employee Amounts in excess of the following amounts: (a) \$225,000 in the aggregate for Prepetition Compensation and (b) \$175,000 in the aggregate for Prepetition Business Expenses.
3. The Debtors are authorized, but not directed, to make cash PTO Payments to the Employees on account of their PTO if such employees are terminated by the Debtors postpetition.
4. The Banks are hereby authorized but not directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts

paid by the Debtors pursuant to this Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.

5. The Banks are authorized but not directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order, without any further inquiry and without liability for following the Debtors' instructions.

6. Subject to the terms of this Order, the Debtors are authorized, but not directed, to continue to administer their Policies and Benefits, in the ordinary course of the Debtors' business, in the same manner and on the same basis as the Debtors implemented and maintained the same prior to the commencement of these chapter 11 cases.

7. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity, priority or amount of any claim against the Debtors or their estates; (b) a waiver of the rights of the Debtors and their estates to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is a claim for Prepetition Compensation, Prepetition Business Expenses, Payroll Taxes, Benefits Deductions or Prepetition Processing Costs; (e) an approval or assumption of any contract or agreement pursuant to section 365 of the Bankruptcy Code; (f) the waiver of any cause of action of the Debtors' and their estates; or (g) impairing, prejudicing, waiving or otherwise affecting any rights of the Debtors and their estates on account of any amounts owed or paid on account of Prepetition Compensation, Prepetition Business Expenses, Payroll Taxes, Benefits Deductions or Prepetition Processing Costs.

8. Notwithstanding any other provision of this Order, no payments to any individual Employee shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).



9. Nothing herein shall be deemed to authorize the payments of any amounts which are subject to section 503(c) of the Bankruptcy Code.

10. The requirements set forth in Bankruptcy Rules 6003(b) and 6004(a) are satisfied by the contents of the Motion.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

Dated: 5/27, 2015  
Wilmington, Delaware



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The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "E"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 9  
 -----X

### **ORDER AUTHORIZING THE DEBTORS TO (A) PAY PRE-PETITION CLAIMS OF SHIPPERS AND WAREHOUSEMEN AND (B) SATISFY CUSTOMS DUTIES IMPOSED ON SHIPMENTS FROM FOREIGN SUPPLIERS**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order authorizing the Debtors to pay certain pre-petition claims of Shippers and Warehousemen and satisfy obligations related to Customs Duties; and the Court having considered the *Declaration of Jay D. Miller in Support of First Day Pleadings* (the "First Day Declaration"); and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

this Motion and opportunity for a hearing on this Motion was appropriate under the particular circumstances and that no other or further notice need be given, and after due deliberation and sufficient cause appearing therefore,

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on the terms set forth herein.
2. The Debtors are authorized, but not directed, to pay in the ordinary course of business certain pre-petition Shipping and Warehousing charges in an amount not to exceed \$125,000 in the aggregate, unless otherwise set forth in a further order, after notice and a hearing.
3. The Debtors are authorized, but not directed, to pay in the ordinary course of business, certain pre-petition Customs Duties, in an amount not to exceed \$10,000 in the aggregate, unless otherwise set forth in a further order, after notice and a hearing.
4. In return for payment of the Shipping and Warehousing charges, the Debtors shall seek agreements from the Shippers and Warehousemen to provide services to the Debtors on Customary Trade Terms, or such other terms as may be agreed upon between the Debtors and such Shippers and Warehousemen.
5. Subject to the objection rights described herein, if any Shipper or Warehouseman accepts payment on account of a pre-petition obligation of the Debtors and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, or other trade terms agreed upon by the Debtors, absent an objection as described below, the Debtors reserve all rights to assert that such payments made were avoidable post-petition transfers under section 549 of the Bankruptcy Code and recoverable by the Debtors. In the event that the Debtors recover any such funds pursuant to the foregoing sentence, the claim of the Shipper or Warehouseman, as the case may be, shall be reinstated as a pre-petition claim in the amount so

recovered. The Debtors are hereby authorized, but not directed, to obtain written verification before issuing payment to a Shipper or Warehouseman that such Shipper or Warehouseman will, if relevant, continue to provide services to the Debtors on Customary Trade Terms, or other agreed upon trade terms, for the remaining term of the Shippers or Warehouseman's relationship with the Debtors; provided, however, that the absence of such written verification will not limit the Debtors' rights hereunder.

6. Nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the pre-petition amounts authorized to be paid to the Shippers and Warehousemen and for Customs Duties.

7. Nothing herein shall impair the Debtors' ability to contest, without prejudice, the validity and amounts owing to the Shippers and Warehousemen or the validity and amount of the Customs Duties.

8. The Debtors do not concede that any liens (contractual, common law, statutory, or otherwise), the obligations of which are paid pursuant to this Order, are valid, and the Debtors expressly reserve the right to contest the extent, validity, perfection, or possible avoidance of all such liens.

9. Nothing herein shall be deemed to constitute the post-petition assumption of any executory contracts between the Debtors and the Shippers and Warehousemen.

10. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.


11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

12. The requirements set forth in Bankruptcy Rule 6004(a) are waived.

13. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

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

Dated: 5/27, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "F"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 : (Jointly Administered)  
 Debtors. :  
 : **Re: Docket No. 10**  
 -----X

### **ORDER GRANTING DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363, 365, 503(b)(1), 1107(a) AND 1108 FOR AUTHORIZATION TO HONOR CERTAIN PREPETITION CUSTOMER PROGRAMS**

This matter coming before the Court on the Motion of Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365, 503(b)(1), 1107(a) and 1108 for Authorization to Honor Certain Prepetition Customer Programs (the "Motion"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and *Declaration of Jay D. Miller in Support of First Day Pleadings* and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is (i) in the best interests of the Debtors, their estates and their creditors and (ii) necessary to prevent immediate and irreparable harm to the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to sections 105(a), 363, 365, 503(b)(1), 1107(a) and 1108 of the Bankruptcy Code, the Debtors are authorized, but not obligated, in their sole discretion, to continue their Customer Programs in the ordinary course of their business in the same manner and on the same basis as the Debtors implemented and maintained the same prior to the commencement of these chapter 11 cases and pay and honor all obligations thereunder whether arising prior to or after the Petition Date; provided, however, that neither the relief granted herein nor any payments made or obligations honored in accordance with this Order shall constitute an approval or assumption of any Customer Program or related contract, agreement or policy pursuant to section 365 of the Bankruptcy Code. The Debtors expressly reserve all rights contained in section 365 of the Bankruptcy Code, including the ability to assume or reject any of the Installation Contracts and/or Service Contracts.
3. The Debtors are authorized, but not directed, to revise, extend, renew, supplement or change the Customer Programs, including related third party arrangements, in their sole discretion, to the extent consistent with the practices and procedures that were in effect prior to the Petition Date.

4. The Banks are hereby authorized but not directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors pursuant to this Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payments.

5. The Debtors are authorized to issue postpetition checks, or to affect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of prepetition obligations relating to the Customer Programs that were dishonored or rejected as a consequence of the commencement of these chapter 11 cases.

6. This Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any obligations arising from or related to the Customer Programs on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

7. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.


8. Bankruptcy Rule 6003(b) has been satisfied.

9. The requirements of Bankruptcy Rule 6004(a) are hereby waived.

10. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: 5/27, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge



# Schedule "G"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
In re: : Chapter 11  
IMRIS, Inc., et al.,<sup>1</sup> : Case No. 15-11133 (CSS)  
Debtors. : (Jointly Administered)  
: Re: Docket No. 12  
-----X

CERTIFIED:  
AS A TRUE COPY:  
ATTEST:

DAVID D. BIRD, CLERK  
U.S. BANKRUPTCY COURT

BY:  Deputy Clerk 5/25/15

### ORDER (I) CONFIRMING THE ENFORCEMENT AND APPLICABILITY OF SECTION 362 OF THE BANKRUPTCY CODE AND (II) CONFIRMING THE DEBTORS AUTHORITY WITH RESPECT TO POST-PETITION OPERATIONS

Upon the motion (the "Motion") of IMRIS, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), for entry of an order, as more fully described in the Motion, enforcing and restating the automatic stay provision of the Bankruptcy Code, the rights of the Debtors to continue business operations, and the status and authority of certain non-Debtor affiliates; and the Court having reviewed the Motion and First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

2. Subject to the right of any party in interest to seek relief from the automatic stay under section 362(d) of the Bankruptcy Code, effective as of the Petition Date, all persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any foreign country (including any division, department, agency, instrumentality, or service thereof and all those acting on their behalf), are stayed, restrained, and enjoined from:

- (a) commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' chapter 11 cases or recovering a claim against the Debtors that arose before the commencement of the Debtors' chapter 11 cases;
- (b) enforcing, against the Debtors or other property of their estates, a judgment or order obtained before the commencement of the Debtors' chapter 11 cases;
- (c) taking any action to obtain possession of property of the Debtors' estates or to exercise control over property of the estate or interfere in any way with the conduct by the Debtors of their businesses, including, without limitation, attempts to interfere with deliveries or attempts to seize or reclaim any equipment, supplies, or other assets the Debtors use in their businesses (whether such equipment, supplies or other assets are owned, leased or otherwise held by the Debtors);
- (d) taking any action to create, perfect, or enforce any lien against property of the Debtors' estates;

- (e) taking any action to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose prior to the commencement of the Debtors' chapter 11 cases;
- (f) taking any action to collect, assess, or recover a claim against the Debtors that arose prior to the commencement of the Debtors' chapter 11 cases;
- (g) offsetting any debt owing to the Debtors that arose before the commencement of the Debtors' chapter 11 cases against any claim against the Debtors; and
- (h) commencing or continuing any proceeding before the United States Tax Court concerning the Debtors, subject to the provisions of 11 U.S.C. § 362(b).

3. The foregoing paragraph is subject in all respects to the exceptions to the automatic stay provided in section 362(b) of the Bankruptcy Code, including, but not limited to the following exceptions:

- (a) the filing of a petition under section 301, 302 or 303 of the Bankruptcy Code, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay of the commencement or continuation of a criminal action or proceeding against the Debtors (11 U.S.C. § 362(b)(1));
- (b) the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained



in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power (11 U.S.C. § 362(b)(4)); and

- (c) (i) an audit by a governmental unit to determine tax liability; (ii) the issuance to the Debtors by a governmental unit of a notice of tax deficiency; (iii) a demand for tax returns; or (iv) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (11 U.S.C. § 362(b)(9)).

4. Pursuant to section 362 of the Bankruptcy Code, effective as of the Petition Date, all persons and foreign and domestic governmental units, and all those acting on their behalf, are stayed, restrained, and enjoined from in any way seizing, attaching, foreclosing upon, levying against, or in any other way interfering with any and all property of the Debtor or the Debtors' estates, wherever located.

5. Effective as of the Petition Date, by operation of law as provided by section 1107 of the Bankruptcy Code, each Debtor is, and has the legal status, of a debtor in possession.

6. Effective as of the Petition Date, by operation of law as provided by section 1108 of the Bankruptcy Code, as a debtor in possession each Debtor is authorized to operate its business in the ordinary course, including, without limitation, negotiating and entering into business transactions, performing obligations, incurring liabilities and paying amounts in respect of such transactions as of the Petition Date as they become due and payable.

7. All ordinary course business obligations incurred by the Debtors after the Petition Date shall be entitled to administrative expense priority under sections 503 and 507(a)(2) of the Bankruptcy Code and the Debtors are authorized to satisfy such obligations in the ordinary course of their business.


8. Those direct and indirect subsidiaries of the Debtors that have not sought relief under chapter 11, including without limitation, IMRIS (Europe) SPRL, IMRIS Germany GMBH, IMRIS India Private Limited, IMRIS Singapore Pte. Ltd., IMRIS KK and IMRIS Medical Technology Service Beijing Co., Ltd., are not part of the chapter 11 proceedings before this Court and the ability of the non-debtors to negotiate, enter into and perform ordinary course business transactions is not limited by any order of this Court or by the Bankruptcy Code.

9. This Order is declarative and is intended to be coterminous with sections 362, 363, 365, 541, 1107, and 1108 of the Bankruptcy Code. Nothing herein shall abridge, enlarge, nor modify the rights and obligations of any party.

10. Notwithstanding any provision of the Federal Rules of Bankruptcy Procedure to the contrary, (a) the terms of this Order shall be immediately effective and enforceable upon its entry, (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (c) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: 5/27, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "H"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 : (Jointly Administered)  
 Debtors. :  
 : Re: Docket No. 14  
 -----X

**ORDER GRANTING MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION  
 FOR ENTRY OF AN ORDER (I) AUTHORIZING THEM TO CONTINUE THE  
 DEBTORS' INSURANCE POLICIES AND PAY  
 OBLIGATIONS IN RESPECT THEREOF, AND (II) TO AUTHORIZE  
 FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND  
TRANSFERS RELATED TO SUCH INSURANCE OBLIGATIONS**

This matter coming before the Court on the Motion of the Debtors and Debtors in Possession for Entry of an Order (I) Authorizing Them to Continue the Debtors' Insurance Policies and Pay Obligations in Respect Thereof, and (II) to Authorize Financial Institutions to Honor and Process Checks and Transfers Related to Such Insurance Obligations. (the "Motion"), filed by the above captioned debtors (collectively, the "Debtors"); the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court; the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012, (ii) venue is proper in this district pursuant to

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion was sufficient under the circumstances and (v) there is good cause to waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; after due deliberation the Court having determined that the relief requested in the Motion is necessary to prevent immediate and irreparable harm to the Debtors and their estates; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Debtors are authorized, but not required, to pay, in their sole discretion, all Insurance Obligations, including those Insurance Obligations that were due and payable or are related to the period prior to the Petition Date up to an aggregate amount of \$150,000 (the "Insurance Cap").
3. The Debtors are authorized and empowered to maintain their Insurance Policies without interruption on the same basis and to the extent consistent with the practices and procedures that were in effect prior to the Petition Date.
4. The Debtors are authorized, in the ordinary course of business, to (a) renew or revise their Insurance Policies or obtain replacement coverage, as needed, and (b) renew or revise their PFAs or enter into post-petition PFAs related to the Insurance Policies and new insurance, as needed, to the extent consistent with the practices and procedures that were in effect prior to the Petition Date.
5. Consistent with the foregoing, the Debtors are authorized, but not directed, to maintain and administer their Workers' Compensation Programs in the ordinary course of

business and consistent with past practice and honor and pay all claims and other costs and expenses related thereto whether arising prior to or after the Petition Date.

6. To the extent prosecution by the Debtors' employees of their valid workers' compensation claims is barred by the automatic stay provision of section 362 of the Bankruptcy Code, the stay shall be lifted solely to permit such employees to liquidate their workers' compensation claims in the appropriate judicial or administrative forum.

7. The Banks are hereby authorized but not directed, when requested by the Debtors, to receive, process, honor and pay any and all checks and transfer requests evidencing amounts paid by the Debtors pursuant to this Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payments.

8. Subject to the Insurance Cap, the Debtors are authorized to replace any prepetition checks or electronic transfers relating to the Insurance Obligations that may be dishonored or rejected.

9. The Banks are authorized but not directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order, without any further inquiry and without liability for following the Debtors' instructions.

10. This Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Insurance Obligations on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

11. To the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the postpetition



assumption of any such Insurance Program or any related contract or agreement pursuant to section 365 of the Bankruptcy Code.

12. The requirements of Bankruptcy Rule 6003(b) are satisfied.


13. The requirements of Bankruptcy Rule 6004(a) are waived.

14. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

16. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: 5/27, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "I"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 Debtors. : (Jointly Administered)  
 :  
 : Re: Docket No. 8, 50  
 -----X

**INTERIM ORDER GRANTING MOTION OF THE DEBTORS AND DEBTORS  
 IN POSSESSION FOR AN ORDER (A) APPROVING THE CONTINUED  
 USE OF THE DEBTORS' CASH MANAGEMENT SYSTEM, (B)  
 APPROVING CONTINUED TRANSFERS BETWEEN DEBTORS AND  
 NON-DEBTOR SUBSIDIARIES, (C) SCHEDULING A FINAL  
 HEARING ON THE MOTION AND (D) GRANTING RELATED RELIEF**

This matter coming before the Court on the Motion of the Debtors and Debtors in Possession for Interim and Final Orders (A) Approving the Continued Use of the Debtors' Cash Management System, (B) Approving Continued Transfers Between Debtors and Non-Debtor Subsidiaries, (C) Scheduling a Final Hearing on the Motion and (D) Granting Related Relief (the "Motion"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

district pursuant to 28 U.S.C. §§1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion and the Hearing was sufficient under the circumstances, and after due deliberation the Court having determined that the relief requested in the Motion is necessary and essential for the Debtors' reorganization and such relief is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized to: (a) maintain the Cash Management System in substantially the same form as described in the Motion and (b) open and close bank accounts. The Debtors shall provide notice of the opening and closing of any bank accounts to (i) the United States Trustee for the District of Delaware and (ii) any official committees appointed in these cases.
3. The Debtors are authorized to continue to use the Bank Accounts under existing account numbers without interruption provided, however, that no checks issued against the Bank Accounts prior to the commencement of these chapter 11 cases shall be honored, except as otherwise authorized by an order of this Court and directed by the Debtors.
4. The Banks are authorized to charge, and the Debtors are authorized to pay or honor, the Bank Fees related to the Bank Accounts. The Banks are also authorized to charge back returned items to the Bank Accounts in the normal course of business
5. The Banks are authorized but not directed to continue to service and administer the Bank Accounts as accounts of the respective Debtor as a debtor in possession without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and

all checks, drafts, wires, or automated clearing house transfers (“ACH Transfers”) drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be. Such Bank Accounts should be renamed “debtor in possession” accounts with the Petition Date included in the account title. The Banks are also authorized but not directed to waive any applicable requirement to establish separate accounts for cash collateral and/or tax payments. The Banks shall not be liable to any party on account of: (a) following the Debtors’ instructions or representations as to any order of this Court; or (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored despite implementation of reasonable item-handling procedures.

6. Except for those checks, drafts, wires, or ACH Transfers that must be honored and paid in order to comply with any order(s) of this Court authorizing payment of certain prepetition claims, no checks, drafts, wires, or ACH Transfers issued on the existing Bank Accounts prior to the Petition Date but presented for payment after the Petition Date shall be honored or paid.

7. The Debtors are authorized to continue to use their existing checks and other business forms, which checks and business forms shall not be required to include the legend “Debtor in Possession” or a debtor in possession case number; provided, however, that, with respect to checks or other business forms which the Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor in Possession” legend, and include the debtor in possession lead case number, on such items within ten (10) days of the date of entry of this Order. However, if new checks and business forms are ordered, such checks and business forms shall be required to include the legend “Debtor in Possession” and a “debtor in possession case

number.” Third-party payroll and benefits administrators and providers are also authorized to prepare and issue checks on behalf of the Debtors, subject to the provisions of this paragraph.

8. Subject to the terms and conditions in this Order, the Debtors may open additional bank accounts and close certain of the Bank Account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors’ requests to open or close, as the case may be, any such Bank Accounts; provided, however, that the Debtors give notice within fifteen (15) days to the Office of the United States Trustee for the District of Delaware and any statutory committees appointed in these chapter 11 cases; provided, further, that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

9. The Debtors are granted an initial thirty (30) day extension from the Petition Date to: (a) comply with the requirements of section 345 of the Bankruptcy Code or Local Rule 4001-3; (b) file a motion seeking authority to deviate from such requirements; or (c) file a motion seeking a further extension.

10. The Debtors are authorized, from and after the Petition Date on an interim basis, to continue to utilize their Cash Management System, including the use of intercompany transactions as described in the Motion; provided, however, that unless and until the Court enters a final order on the Motion, the Debtors shall not transfer in excess of \$1,000,000 in the aggregate to non-debtor affiliates or subsidiaries. All Intercompany Claims against a Debtor held by another Debtor or a non-Debtor subsidiary arising from postpetition intercompany transfers shall be entitled to administrative expense priority pursuant to section 503(b)(1) of the Bankruptcy Code.

11. The Debtors shall maintain accurate and detailed records of all transfers, including intercompany transfers, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and post-petition transactions.

12. For Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order the Debtors shall (a) contact each Bank, (b) provide each of the Debtors' employer identification numbers and (c) identify each of their Bank Accounts held at such Banks as being held by a debtor in possession in a bankruptcy case.

13. For Banks at which the Debtors hold Bank Accounts that are not a party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good faith reasonable best efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

14. Nothing in this Order shall be construed as approval of the Debtors to pay any prepetition claims of non-debtor affiliates.

15. The Motion is set for a final hearing (the "Final Hearing") to be held at 10:00 a.m. (Eastern Daylight Time) on June 16, 2015, with an objection deadline of 12:00 p.m. (Eastern Daylight Time) on June 11, 2015 (the "Objection Deadline"). Any objection to entry of the final order shall be filed with this Court, and served upon respective counsel to the Debtors, the Creditors' Committee, the Banks and the U.S. Trustee, on or before the Objection Deadline.

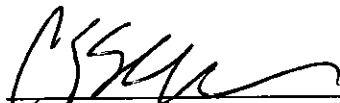
16. The requirements set forth in Bankruptcy Rules 6003(b) and 6004(a) are satisfied by the contents of the Motion.

17. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, this Order shall be immediately effective and enforceable upon its entry.

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

19. The Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Dated: 5/28, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "J"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
 In re: : Chapter 11  
 :  
 IMRIS, Inc., *et al.*,<sup>1</sup> : Case No. 15-11133 (CSS)  
 :  
 : (Jointly Administered)  
 Debtors. :  
 : **Re: Docket No. 11, 51**  
 -----X

**INTERIM ORDER (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO  
 PAY CERTAIN PREPETITION TAXES, (II) AUTHORIZING BANKS  
 TO HONOR RELATED CHECKS AND ELECTRONIC TRANSFERS, AND  
(III) SCHEDULING A FINAL HEARING ON THE MOTION**

Upon the Motion (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors-in-possession pursuant to sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code and Bankruptcy Rule 6004 for entry of an order (i) authorizing the Debtors to pay, in their discretion, certain prepetition taxes and fees and (ii) authorizing Banks and other financial institutions to honor and process electronic transfers or checks related thereto; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Motion.



the Debtors, their estates and creditors; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized but not directed to pay all current Taxes to the Taxing Authorities in the ordinary course of their businesses, provided, however, that the Debtors shall not pay any overdue, Pre-Petition Taxes without further order of this Court.
3. The Banks are hereby authorized but not directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors pursuant to this Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.
4. The Banks are authorized but not directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order, without any further inquiry and without liability for following the Debtors' instructions.
5. This Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Taxes or audit amounts on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.
6. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.
7. The Motion is set for a final hearing (the "Final Hearing") to be held at 10:00 a.m. (Eastern Daylight Time) on June 16, 2015, with an objection deadline of 12:00 p.m. (Eastern Daylight Time) on June 11, 2015 (the "Objection Deadline"). Any objection to entry of the final

order shall be filed with this Court, and served upon respective counsel to the Debtors, the Creditors' Committee, the Banks and the U.S. Trustee, on or before the Objection Deadline.

8. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

10. The requirements of Bankruptcy Rule 6004(a) are waived.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: 5/28, 2015  
Wilmington, Delaware



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The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

# Schedule "K"

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

-----X  
In re: : Chapter 11  
IMRIS, Inc., et al.,<sup>1</sup> : Case No. 15-11133 (CSS)  
Debtors. : (Jointly Administered)  
-----X  
Related to Docket Nos. 19, 25 & 32

CERTIFIED:  
AS A TRUE COPY:

ATTEST:

DAVID D. BIRD, CLERK  
U.S. BANKRUPTCY COURT

BY:

Deputy Clerk 5/28/15

**INTERIM ORDER UNDER SECTIONS 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND 507 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 4001 AND 9014: (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING; (II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)**

Upon the motion, dated May 25, 2015 (the "*Motion*"), of IMRIS, Inc., a Delaware corporation ("*IMRIS US*") and each of its affiliated debtors and debtors in possession (collectively, the "*Debtors*") in the above-captioned cases (the "*Cases*") commenced on May 25, 2015 (the "*Petition Date*"), for interim and final orders under sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "*Bankruptcy Code*"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "*Bankruptcy Rules*"), and the

<sup>1</sup> The Debtors are the following three entities: IMRIS Inc. (taxpayer identification number 98-0473230), IMRIS, Inc. (taxpayer identification number 98-0462325) and NeuroArm Surgical Ltd. (Canadian corporation number 751695-9). The mailing address of each of the Debtors, solely for purposes of notices and communications, is 5101 Shady Oak Rd., Minnetonka, MN 55343.

Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Delaware (the "*Local Rules*"), seeking:

(I) the authority for IMRIS US and IMRIS Inc., a Canadian company, ("*IMRIS Canada*") and NeuroArm Surgical Limited (together with IMRIS US and IMRIS Canada; collectively, the "*Borrowers*") and each Debtor in its capacity as a guarantor (the "*Guarantors*") to enter into that certain Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of May 28, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "*DIP Agreement*"), substantially in the form attached hereto as Exhibit A, together with the other agreements delivered or executed from time to time in connection therewith (as hereafter amended, restated, supplemented or otherwise modified from time to time, together with the DIP Agreement, the "*DIP Documents*"), pursuant to which the Borrowers and Guarantors shall (a) obtain up to \$5,363,413 in aggregate postpetition senior secured superpriority debtor-in-possession financing ("*DIP Loan Facility*") and other extensions of credit from the lenders from time to time party thereto (initially, on the closing date, the "*Initial DIP Lenders*", and together with any other lenders from time to time party thereto, the "*DIP Lenders*") and Deerfield Management Company, L.P., as the administrative and collateral agent (the "*DIP Agent*") and (b) grant security interests and liens and accord superpriority claim status in favor of the DIP Agent and the DIP Lenders pursuant to sections 361, 364(c) and 364(d)(1) of the Bankruptcy Code in accordance with the DIP Documents;<sup>2</sup>

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Documents.

(II) authorization for the Debtors to execute and deliver the DIP Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(III) authorization for the Debtors to use Cash Collateral (as defined in paragraph 4(i) below) pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined in paragraph 4(a) below);

(IV) to grant adequate protection with respect to the use of Cash Collateral and any diminution in the value of the Prepetition Collateral (as defined below) securing the Debtors' Prepetition Secured Obligations (as defined below) under that certain Facility Agreement dated as of September 16, 2013, as amended as of March 31, 2015 (as otherwise amended, restated, supplemented or modified from time to time, the "*Existing Facility Agreement*"), by and among the Debtors, on the one hand, and the lenders from time to time party thereto, on the other hand, together with the documents and agreements related thereto or entered into in connection therewith (collectively, with the Existing Facility Agreement, the "*Prepetition Secured Agreements*");

(V) at an interim hearing (the "*Interim Hearing*") on the Motion before this Court, pursuant to Bankruptcy Rule 4001, entry of this interim order (the "*Interim Order*"): (a) authorizing the Borrowers, on an interim basis, to borrow under the DIP Agreement an aggregate principal amount not to exceed \$3,500,000 million (plus fees, interest and other amounts in accordance with the terms of the DIP Documents) at any time outstanding prior to the entry of the Final Order (as defined below); (b) authorizing the Debtors, on an interim basis, to use Cash Collateral and the other Prepetition Collateral; and (c) granting, on an interim basis, adequate protection to the Prepetition Secured Parties; and

(VI) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "*Final Hearing*") for this Court to consider entry of a final order (the "*Final Order*"), authorizing and approving on a final basis the relief requested in the Motion, including without limitation, the Borrowers' ability on a final basis to utilize the DIP Loan Facility and the Debtors' ability to continue to use Cash Collateral and the other Prepetition Collateral, subject to the terms of the DIP Documents and the Final Order.

The Interim Hearing having been held by this Court on May 27, 2015, and upon the record made by the Debtors at the Interim Hearing, including, without limitation, the admission into evidence of the *Declaration of Jay D. Miller in Support of First Day Pleadings* [D.I. 4], which was filed with the Court on the Petition Date, and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, as applicable, on an interim basis, that:

1. Grant of Motion. The Motion is hereby GRANTED on an interim basis as hereinafter set forth. Any and all objections to the relief requested in the Motion, to the extent not withdrawn with prejudice, waived or resolved by consent at or before the Interim Hearing, are hereby OVERRULED and DENIED.

2. Jurisdiction/Venue. This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Notice. The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 2002, 4001(b), (c), and (d) and Rule 9014, and the Local Rules. Notice of the

Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, to certain parties in interest, including: (a) United States Trustee for Region III; (b) those creditors holding the twenty largest unsecured claims against each of the Debtors' estates; (c) the Prepetition Secured Parties and their attorneys; (d) counsel for the Initial DIP Lenders; (e) all secured creditors of record; (f) the United States Internal Revenue Service; and (g) the United States Securities and Exchange Commission. Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion complies with Bankruptcy Rules 2002 and Local Rule 4001-2.

4. Debtors' Stipulations and Releases. Without prejudice to the rights of any other party (but which rights are subject to the limitations thereon contained in paragraph 24 of this Interim Order), the Debtors admit, stipulate and agree that:

(a) as of the Petition Date, the Debtors who are party to or otherwise obligated under the Prepetition Secured Agreements, without defense, counterclaim, recoupment or offset of any kind, were jointly and severally indebted and liable to the Prepetition Secured Parties in the aggregate principal amount of not less than \$26,957,468.75 of outstanding borrowings under the Prepetition Secured Agreements, plus all costs, fees, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, the "*Prepetition Secured Obligations*"), which Prepetition Secured Obligations are secured by (i) first-priority security interests in and liens on substantially all of the Debtors' assets, including accounts, inventory, capital stock of certain of the Debtors, contract rights, instruments, documents, chattel paper, drafts and acceptances, general intangibles and all other forms of obligations owing to the Debtors (and the proceeds,

product and offspring therefrom, collectively, the "*Prepetition Collateral*") all as more fully described in the Prepetition Secured Agreements;

(b) the Prepetition Secured Obligations constitute the legal, valid and binding obligations of the respective Debtors named in the Prepetition Secured Agreements, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(c) the liens granted to the Prepetition Secured Parties on the Prepetition Collateral pursuant to and in connection with the Prepetition Secured Agreements (collectively, the "*Prepetition Liens*"), including, without limitation, all security agreements, pledge agreements and other security documents executed by any of the Debtors for the benefit of the Prepetition Secured Parties, are (i) valid, binding, perfected and enforceable liens and security interests in the property described in the Existing Credit Facility Agreement, (ii) not, pursuant to the Bankruptcy Code or other applicable law, subject to avoidance, recharacterization, recovery, subordination, attack, offset, recoupment, counterclaim, defense or "claim" (as such term is defined in the Bankruptcy Code) of any kind, and (iii) subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below) to which the DIP Liens are subject and (C) valid, perfected and unavoidable liens and security interests permitted under the Existing Facility Agreement and existing as of the Petition Date;

(d) no portion of the Prepetition Secured Obligations or any payments made to the Prepetition Secured Parties or applied to the Prepetition Secured Obligations prior to the Petition Date is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as such term



is defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law;

(e) subject to entry of the Final Order, each Debtor hereby forever waives and releases any and all "claims" (as such term is defined in the Bankruptcy Code), counterclaims, causes of action, defenses and setoff rights against the Prepetition Secured Parties, in their capacities as such, whether arising at law or in equity, including, without limitation, any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law; provided, however, that nothing herein or in any of the DIP Documents shall operate as a release or waiver of any claims or causes of action held by any party (including, without limitation, any of the Debtors) against any Debtor, any "affiliate" (as such term is defined in the Bankruptcy Code) of any Debtor or any officer, director or direct or indirect equity owner (or affiliate thereof) of any Debtor; and

(f) substantially all cash, securities or other property (and the proceeds therefrom) as of the Petition Date, including without limitation, all cash, securities or other property (and the proceeds, product and offspring therefrom) and other amounts on deposit or maintained by the Debtors in accounts pursuant to the Prepetition Secured Agreements were subject to rights of setoff and valid, perfected, enforceable, first priority liens under the Existing Facility Agreement and the other Prepetition Secured Agreements, and applicable law, for the benefit of the Prepetition Secured Parties. All proceeds of the Prepetition Collateral are Cash Collateral of the

Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (collectively, the "*Cash Collateral*").

5. Need for Financing and Cash Collateral Use.

(a) The Debtors have an immediate need to obtain the DIP Loan Facility and to use the Prepetition Collateral, including any cash that constitutes Prepetition Collateral, in order to, among other things, permit the orderly continuation of the operation of their businesses, preserve the going concern value of the Debtors, pay the costs of administration of their estates and for the other purposes set forth in the DIP Documents. The Debtors' use of the Prepetition Collateral (including the Cash Collateral) and the DIP Loan Facility is necessary to prevent immediate and irreparable harm to the Debtors' estates.

(b) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders pursuant to, and for the purposes set forth in, the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Agent for the benefit of itself and the DIP Lenders, subject to the Carve-Out (as defined in paragraph 17 below), (i) the DIP Liens (as defined in paragraph 12(a) below), including the priming DIP Liens and (ii) the Superpriority DIP Claims (as defined in paragraph 13(a) below), in each case on the terms and conditions set forth in this Interim Order and the DIP Documents. No party or parties other than the DIP Lenders would provide postpetition financing to the Debtors absent the Debtors

granting such parties priming liens on the Debtors' assets pursuant to section 364(d)(1) of the Bankruptcy Code or other impracticable conditions, and the Debtors were unable to satisfy the requirements of section 364(d)(1) of the Bankruptcy Code.

6. Proposed DIP Loan Facility. The Borrowers have requested the DIP Agent and DIP Lenders to establish the DIP Loan Facility pursuant to which the Borrowers may from time to time obtain loans ("*DIP Loans*") in an aggregate principal amount of up to \$5,363,413 outstanding at any time pursuant to the terms of the DIP Documents. The DIP Agent and each DIP Lender is willing to establish the DIP Loan Facility, upon the terms and conditions set forth herein and in the DIP Documents.

7. Certain Conditions to DIP Loan Facility. The DIP Agent's and DIP Lenders' willingness to establish the DIP Loan Facility is conditioned upon, among other things: (a) the Debtors obtaining Court approval of the DIP Agreement (and all extensions of credit thereunder), as well as all of the other DIP Documents; (b) the Debtors' provision of adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code for the interests of Prepetition Secured Parties with respect to the Prepetition Liens; (c) the DIP Agent and each DIP Lender receiving, as security for the payment of the DIP Obligations (as defined below), security interests in and liens upon the DIP Collateral (as defined below) and the DIP Documents; and (d) the Debtors' satisfaction of all conditions precedent in the DIP Agreement and DIP Documents, unless waived in writing by the Initial DIP Lenders in their sole discretion.

8. Finding of Cause. Good cause has been shown for the entry of this Interim Order and authorization for the Debtors to use Cash Collateral and to obtain extensions of credit under the DIP Loan Facility (the "*DIP Credit Extensions*") pursuant to the terms of the DIP Documents. The Debtors' need for use of Cash Collateral and financing of the type

afforded by the DIP Agreement is ongoing, immediate and critical. Entry of this Interim Order will minimize disruption of the Debtors' businesses and operations, will preserve the assets of the Debtors' estates and their value and is in the best interests of the Debtors, their creditors and their respective estates. The terms of the proposed financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment and are supported by reasonably equivalent value and fair consideration.

9. Finding of Good Faith. Based upon the record presented at the Interim Hearing, the Court finds that the DIP Agreement and the other DIP Documents, as well as the terms of this Interim Order, have been negotiated in good faith and at arm's length between the Borrowers and the Guarantors, on the one hand, and the DIP Agent and DIP Lenders, on the other hand. Therefore, all DIP Credit Extensions heretofore and hereafter made to the Borrowers pursuant to the DIP Documents shall be deemed to have been extended and made in good faith within the meaning of section 364(e) of the Bankruptcy Code.

10. Authorization of Interim Financing; Budget.

(a) The Court hereby authorizes (i) the execution, delivery and performance by each Debtor of and under the DIP Agreement and other DIP Documents, as applicable, in substantially the form annexed to the Motion (with such changes, if any, as were addressed to the Court at the Interim Hearing or are authorized to be made as amendments to the DIP Agreement and other DIP Documents in accordance with this Interim Order) and all other instruments, security agreements, assignments, pledges, and other documents referred to therein or required by the DIP Agreement to be executed by one or more Borrowers and/or Guarantors; (ii) the Borrowers' obtaining DIP Loans and other DIP Credit Extensions in

accordance with the DIP Documents from time to time up to an aggregate principal amount outstanding at any time of \$5,363,413, inclusive of up to \$939,413 to be used solely to refinance the "Revolving Loans" (under and as defined in the Existing Facility Agreement) (the "*Roll-Up*"), plus interest, fees and other charges payable in connection with the foregoing; and (iii) the Debtors satisfying all conditions precedent and performance of all obligations hereunder and under the DIP Documents in accordance with the terms hereof and thereof; provided, however, that the authorization to use proceeds of DIP Loans shall be limited solely to the purposes specified and authorized in this Interim Order or the DIP Documents (collectively, the "*Permitted Uses*"); and provided, further, that until the entry of the Final Order, the Borrowers may obtain DIP Credit Extensions only to the extent necessary to avoid immediate and irreparable harm to the Borrowers, which, for purposes hereof, shall include, without limitation, obligations and expenses specified in the Budget (as defined below), the funding of DIP Loans used to pay the fees and expenses due and other amounts owing by Debtors at any time to the DIP Agent and DIP Lenders under the DIP Documents, and other expenses and obligations of any Borrower to the DIP Agent and DIP Lenders that are required to be paid prior to the Final Hearing under the DIP Documents, this Interim Order or any other order of the Court. Notwithstanding the foregoing, the Debtors may request the Court, after notice and a hearing, to authorize the Debtors to use the proceeds of the DIP Loans for purposes other than those specified in the DIP Agreement, subject to the right of the DIP Lenders to cease funding from and after the entry of an order authorizing the Debtors

to use the proceeds of the DIP Loans for purposes not otherwise authorized by the DIP Lenders in the DIP Agreement.

(b) The DIP Agent and DIP Lenders shall not have any obligation or responsibility to monitor the Borrowers' use of any DIP Loans, and may rely upon any Borrower's representations that the amount of the DIP Credit Extensions requested at any time, and the use thereof, are in accordance with the requirements of this Interim Order and the DIP Documents.

(c) The Borrowers shall deliver to the DIP Agent, on a periodic basis as required by the DIP Loan Facility from and after the closing of the DIP Loan Facility, updates to the "Budget" (as defined in the DIP Agreement) to be acceptable to the DIP Agent and Initial DIP Lenders as and to the extent required by the DIP Agreement (such updated Budgets, the "*Budget*").

11. Execution, Delivery and Performance of DIP Documents. Each of the Borrowers and Guarantors are authorized to execute, deliver and perform under all the terms and conditions of each and every DIP Document. The DIP Documents may be executed and delivered on behalf of each Debtor by any officer, director or agent of such Debtor who represents himself or herself to be duly authorized and empowered to execute the DIP Documents for and on behalf of such Debtor, and the DIP Agent and DIP Lenders may rely upon any of such person's execution and delivery of any of the DIP Documents as having done so with all requisite power and authority to do so. Upon the entry of this Interim Order, the DIP Documents shall constitute valid and binding obligations of each Debtor, enforceable against such Debtor in accordance with their terms. In furtherance of the provisions of this Interim Order, each Debtor is authorized to do and perform all acts, to make, execute and deliver all

instruments and documents (including, without limitation, if applicable, the execution of the DIP Agreement, security agreements, pledge agreements, control agreements, mortgages, deeds of trust, deeds to secure debt, financing statements and intellectual property filings), and to pay all filing and recording fees as may be necessary or, in the opinion of the DIP Agent or any DIP Lender, are desirable to give effect to any of the terms and conditions of the DIP Documents or as otherwise required or contemplated by the DIP Documents.

12. DIP Collateral and DIP Liens.

(a) All "Obligations" under (and as defined in) the DIP Agreement, including, without limitation, all DIP Credit Extensions and all amounts owing (then existing, contingent or otherwise, all of the foregoing being collectively called the "*DIP Obligations*") shall be, and hereby are, secured, subject and subordinate only to the Carve-Out (as defined in paragraph 17 below), by perfected, first priority liens (collectively, the "*DIP Liens*") in favor of the DIP Agent and each DIP Lender on and in all of the Prepetition Collateral and all other assets of the Debtors in existence or created prior to, on or after the Petition Date, and subject to the entry of the Final Order, any proceeds or property recovered in connection with the successful prosecution or settlement of any claims pursuant to sections 502(d), 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code (collectively, the "*DIP Collateral*").

(b) The DIP Liens with respect to the DIP Collateral shall have the following priorities:

- i Unencumbered Collateral. Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority lien on and security interest in all DIP Collateral (including, without limitation, all real property) that is not subject to a valid and perfected lien

existing on the Petition Date other than the DIP Collateral on which there are liens and security interests as described in clause (iii) below;

- ii Encumbered Collateral. Pursuant to section 364(c)(3) of the Bankruptcy Code, a lien on and security interests in all DIP Collateral (including, without limitation, all real property) that is subject to a valid, perfected and unavoidable lien existing on the Petition Date to the extent such lien was on the Petition Date senior to the Prepetition Liens;
- iii Extent of Priming DIP Lien. Pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, senior priming lien on and security interest in all Prepetition Collateral that is or was intended or required to be subject to valid and perfected liens existing on the Petition Date in favor of the Prepetition Secured Parties; and
- iv Carve-Out. The DIP Liens shall be subject and subordinate in all respects to the Carve-Out in accordance with paragraph 17 of this Interim Order.

13. Superiority DIP Claim; Surcharge.

(a) Scope of Superpriority DIP Claim. Subject to the Carve-Out in accordance with paragraph 17 of this Interim Order, and in addition to being secured as provided in this Interim Order and any Final Order, all DIP Obligations shall constitute an allowed administrative expense claim under section 503(b) of the Bankruptcy Code and shall constitute an allowed superpriority claim (the "*Superpriority DIP Claim*") pursuant to section 364(c)(1) of the Bankruptcy Code over all other administrative expenses in the Debtors' cases of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the Final Order), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code. Without limiting the generality of the foregoing, the Superpriority DIP Claim shall be superior to any and all administrative priority claims arising out of transactions, if any, arising between any Debtor, on the one hand and any other



Debtor or subsidiary of a Debtor, and all such intercompany claims shall be subordinate to the Superpriority DIP Claim.

(b) No Surcharge. Subject to the Carve-Out in accordance with paragraph 17 of this Interim Order, it shall be an Event of Default under (and as defined in) the DIP Agreement for any costs or administrative expenses that have been or may be incurred in these chapter 11 cases, in any matters or proceedings related hereto or in any superseding chapter 7 case, to be prior to or on a parity with the Superpriority DIP Claim of the DIP Agent and DIP Lenders for the DIP Obligations. Subject to entry of the Final Order, in no event shall any costs or expenses of administration be imposed upon the DIP Agent, any DIP Lender or any of the DIP Collateral pursuant to sections 105, 506(c) or 552(b) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Agent and all DIP Lenders, and no such consent shall be implied from any action, inaction or acquiescence by the DIP Agent or any DIP Lender; and, subject to the entry of the Final Order, in no event shall any costs or expenses of administration be imposed upon the Prepetition Secured Parties or any Prepetition Collateral, whether pursuant to sections 105, 506(c) or 552(b) of the Bankruptcy Code, or otherwise, without the prior written consent of the Prepetition Secured Parties, and no such consent shall be implied from any action, inaction or acquiescence by the Prepetition Secured Parties.

14. Joint and Several Liability; Borrower Reimbursement Claims.

(a) The Debtors shall be jointly and severally liable to repay the DIP Obligations in accordance with the DIP Documents. The DIP Obligations shall be due and payable, and shall be paid, as and when provided in the DIP Documents and

as provided herein, without offset, counterclaim, deduction or other claim of avoidance of any nature or type. In no event shall the Debtors be authorized to offset, deduct, avoid or recoup any amounts owed, or alleged to be owed, by the DIP Agent, any DIP Lender or any Prepetition Secured Party to any Debtor against any of the DIP Obligations (including, without limitation, any such obligations owing under the Prepetition Secured Agreements), unless and to the extent expressly otherwise agreed to in writing by each of the DIP Agent, DIP Lenders and Prepetition Secured Parties, as applicable.

(b) No Debtor shall have any right of contribution, reimbursement or subrogation from any other Debtor, or any other Debtor's assets as a result of such Debtor's use of Cash Collateral or DIP Loans.

15. Cash Collateral; Other Matters. Subject to the terms of this Interim Order and the DIP Documents, the Debtors are authorized to use Cash Collateral that is secured by the DIP Liens or the Prepetition Liens in accordance with this Interim Order and the DIP Documents. Each Debtor shall cause the Cash Collateral to be promptly deposited in one or more accounts as required by the DIP Documents, which shall be subject to the DIP Liens. Prior to the deposit of such Cash Collateral, the Debtors shall be deemed to hold all such proceeds in trust for the benefit of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, as applicable. The DIP Agent and DIP Lenders may, subject to the provisions of the DIP Documents, apply (and reapply) any or all Cash Collateral at any time or times in its possession or control to the payment of any of the DIP Obligations, in such order of application as the DIP Agent or any DIP Lender may designate or elect, and may use all or part of the Cash Collateral to collateralize any contingent DIP Obligations. If after the repayment in full in cash ("*Full*

*Payment*") of the DIP Obligations, any Challenge (as defined below), claim or cause of action is asserted against the DIP Agent or any DIP Lender or any Prepetition Secured Parties, then such parties shall be entitled to payment from Debtors to the extent of all costs, expenses, liabilities or damages incurred by it or them (including, without limitation, reasonable attorneys' fees), as secured creditors pursuant to the terms of the DIP Documents and Existing Facility Agreement, all as more fully set forth in a Final Order.

16. Adequate Protection of Prepetition Secured Parties. As adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code for the Debtors' use, consumption, sale, collection or other disposition of any of the Prepetition Collateral the Prepetition Secured Parties shall receive the following as adequate protection:

(a) to the extent there is a diminution in the value of the interests of the Prepetition Secured Parties in the Prepetition Collateral (whether the reason for such diminution is as a result of or from, arises from, or is attributable to, the imposition of the automatic stay, the priming of the Prepetition Liens, the use of Cash Collateral or the physical deterioration, consumption, use, sale, lease, disposition, shrinkage or decline in market value of the Prepetition Collateral), the Prepetition Secured Parties are granted replacement liens on the Prepetition Collateral (the "*Replacement Liens*"), which liens are valid, binding, enforceable and fully perfected as of the date hereof;

(b) an allowed administrative claim (the "*Credit Facility Administrative Claim*") against the Debtors' estates under section 507(b) of the Bankruptcy Code to the extent that the Replacement Liens do not adequately protect the diminution in the value of the Prepetition Collateral, which Credit Facility Administrative Claim, if

any, shall be junior and subordinate to the Carve-Out and the Superpriority DIP Claim; and

(c) payment of fees and expenses of the Prepetition Secured Parties' to the extent incurred prior to, on or after the Petition Date.

17. Payment of Certain Fees and Expenses.

(a) Use of Professional Expenses. The Borrowers are authorized to use proceeds of DIP Loans solely for the uses permitted under the DIP Agreement, including, without limitation, (i) to pay any fees required to be paid to the Clerk of the Court; and (ii) to pay the fees of the U.S. Trustee pursuant to 28 U.S.C. § 1930 and payment of interest, if any, pursuant to 31 U.S.C. § 3717. For so long as no Event of Default under (and as defined in) the DIP Agreement shall have occurred and be continuing, Borrower is also authorized to use the proceeds of the DIP Loans, without limitation, (i) to pay the fees and disbursements incurred by a chapter 7 trustee (if any) under section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000 out of the DIP Collateral; and (ii) to pay fees, compensation, costs, expenses and disbursements (collectively, "*Professional Expenses*") of professionals (including, without limitation, attorneys, accountants, appraisers, consultants and investment bankers) retained by the Borrowers (the "*Debtor Professionals*") or an official committee, if any, appointed in these chapter 11 cases (any such official committee being referred to as a "*Committee*"), and the professionals retained by such Committee, provided, however, that no proceeds of DIP Loans or any Cash Collateral of the DIP Agent or Prepetition Secured Parties shall be used to pay Professional Expenses of any Debtor Professionals or Committees (collectively, the

*“Professional Persons”*) or any other costs incurred in connection with (i) investigating, commencing or continuing any claims, causes of actions, adversary proceedings or contested matters against any Prepetition Secured Party, the DIP Agent or any DIP Lender with respect to any loan, repayment or other transaction, act or inaction under or in connection with the Prepetition Secured Agreements or DIP Documents (as the case may be), including, without limitation, discovery proceedings subsequent to the commencement of any such claims or causes of action; (ii) except to contest whether an Event of Default has occurred and exists under the DIP Agreement, preventing, hindering or delaying performance or enforcement by any Prepetition Secured Party, the DIP Agent or any DIP Lender of its rights or remedies under this Interim Order or any of the DIP Documents; (iii) challenging any liens granted in connection with the Prepetition Secured Agreements, the DIP Liens or the Superpriority DIP Claim; (iv) challenging the DIP Obligations or the Prepetition Secured Obligations; or (v) that would otherwise be expenses not permitted pursuant to the Budget. Notwithstanding the foregoing limitations up to \$10,000 may be used by the Committee solely to investigate claims, causes of action or adversary proceedings against the Prepetition Secured Parties with respect to the Prepetition Liens granted to such persons on Prepetition Collateral.

(b) Carve-Out. For the purposes of this Interim Order, the *“Carve-Out”* shall mean: (i) Professional Expenses incurred by Professional Persons at any time, to the extent allowed at any time, whether by this Interim Order, procedural order, or otherwise, but only to the extent all such Professional Expenses set forth in this clause do not exceed the amount permitted through such time for such expenses in the

Budget as then applicable; provided, however, that upon the occurrence of an Event of Default, the Professional Expenses incurred by Professional Persons thereafter may not exceed \$50,000; (ii) U.S. Trustee fees, pursuant to 28 U.S.C. § 1930 (the "*U.S. Trustee Fees*"); and (iii) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not exceeding \$50,000 out of the DIP Collateral; provided, that nothing herein shall be construed to impair the ability of any interested party to object to any Professional Expenses sought by any Professional Person.

18. Preservation of Rights Granted Under this Interim Order.

(a) Protection From Subsequent Financing Order. It shall constitute an Event of Default under (and as defined in) the DIP Agreement if any Debtor seeks, or if there is entered in these chapter 11 cases, or in any successor cases, any order that authorizes the obtaining of credit or the incurrence of indebtedness by any Debtor (or any trustee or examiner) that (i) is secured by a security, mortgage, collateral interest or lien on all or any part of the DIP Collateral that is equal or senior to the DIP Liens or Credit Facility Replacement Liens, except as expressly authorized by the DIP Agreement, or (ii) has priority administrative status that is equal or senior to the Superpriority DIP Claim; provided, however, that nothing herein shall prevent the entry of an order that specifically provides that, as a condition to the granting of the benefits of clauses (i) or (ii) above, all of the DIP Obligations and Prepetition Secured Obligations must be fully paid from the proceeds of such credit or indebtedness, and all contingent obligations owed to any DIP Lender or any Prepetition Secured Party

fully cash collateralized as provided in the DIP Documents or Prepetition Secured Agreements (as applicable).

(b) Rights Upon Dismissal, Conversion or Consolidation. If any chapter 11 case is dismissed, converted or substantively consolidated with another case, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of such chapter 11 case shall affect the rights or remedies of the DIP Agent and DIP Lenders under the DIP Documents or the rights or remedies of Prepetition Secured Parties or the DIP Agent or DIP Lenders under this Interim Order, and all of the respective rights and remedies hereunder and thereunder of Prepetition Secured Parties, the DIP Agent and DIP Lenders shall remain in full force and effect as if such chapter 11 case had not been dismissed, converted, or substantively consolidated. It shall constitute an Event of Default if any Debtor seeks, or if there is entered, any order dismissing any of the chapter 11 cases. Notwithstanding any order that may be entered in the future dismissing any of the chapter 11 cases (i) all of the liens and claims granted hereunder shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order (and that such liens and claims shall, notwithstanding such dismissal, remain binding on all interested parties) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing all such lenders' liens and claims to the greatest extent permitted by applicable law.

(c) No Discharge; Credit Bid Rights. Unless and until Full Payment of the DIP Obligations shall occur, all such obligations shall not be discharged by the entry of any order confirming a plan of reorganization in any of the chapter 11 cases

and, pursuant to section 1141(d)(4) of the Bankruptcy Code, all of the Debtors have waived such discharge. Subject to entry of the Final Order, no plan of reorganization or liquidation, nor any order entered in connection with a sale of assets under section 363 of the Bankruptcy Code or otherwise, shall limit or otherwise restrict the right of the DIP Agent or any DIP Lender, or any Prepetition Secured Party to submit a credit bid for all or any part of the DIP Collateral.

(d) No Marshaling. The Debtors agree not to assert rights pursuant to the equitable doctrine of “marshaling” or any similar doctrine with respect to any DIP Collateral at any time securing any of the DIP Obligations, and, subject to entry of the Final Order, in no event shall any DIP Liens be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of any Debtor’s estate pursuant to section 551 of the Bankruptcy Code.

(e) No Requirement to File Proof of Claim. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any bar order establishing a deadline for the filing of proofs of claims entitled to administrative expense treatment under section 503(b) of the Bankruptcy Code, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be required to file any proof of claim with respect to any of the DIP Obligations or the Prepetition Secured Obligations, all of which shall be due and payable in accordance with the DIP Documents and the Prepetition Secured Agreements, as applicable, without the necessity of filing any such proof of claim, and the failure to file any such proof of claim shall not affect the validity or enforceability of any of the DIP Documents or the Existing Facility Agreement, as



applicable, or prejudice or otherwise adversely affect the DIP Agent's, any DIP Lender's or any Prepetition Secured Parties' rights, remedies, powers or privileges under the DIP Documents, the Existing Facility Agreement or this Interim Order.

(f) Reservation of Rights. The terms, conditions and provisions of this Interim Order are in addition to, and without prejudice to the rights of, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties to pursue any and all rights and remedies available to them under the Bankruptcy Code, the Existing Facility Agreement and the DIP Documents, or any other applicable agreement or law including, without limitation, the right to seek adequate protection and/or additional or differing adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of Cash Collateral or the granting of any interest in the DIP Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professional Persons, or other parties seeking compensation in the chapter 11 cases.

19. Automatic Perfection of Liens. The DIP Liens and Credit Facility Replacement Liens (collectively, the "*DIP Order Liens*") shall, as of the Petition Date, be deemed valid, binding, enforceable and perfected with respect to all of the DIP Collateral or Prepetition Collateral, as applicable, upon entry of this Interim Order. The DIP Agent, DIP Lenders, and the Prepetition Secured Parties, shall not be required to file any UCC-1 financing statements, mortgages, deeds of trust, security deeds, notices of lien or any similar document or take any other action (including, without limitation, possession of any of the DIP Collateral or any other property of any Debtor or the obtaining of any consent of any third party including,

without limitation, any third party to a control or similar agreement under the Existing Facility Agreement) in order to validate the perfection of any DIP Order Liens. If the DIP Agent, any DIP Lender, or any Prepetition Secured Party chooses to file or record any such mortgages, deeds of trust, security deeds, notices of lien or UCC-1 financing statements, or take any other action to validate the perfection of any DIP Order Liens, the Debtors and their respective officers are authorized to execute any documents or instruments as the DIP Agent, any DIP Lender or the Prepetition Secured Parties, shall reasonably request, and the Debtors shall pay or reimburse the DIP Agent, each DIP Lender, Prepetition Secured Parties (as applicable) for the payment of any cost, fees or expenses (including, without limitation, recording taxes) payable in connection with the filing or recordation of any UCC-1 financing statements, mortgages, deeds of trust, security deeds, notices of lien or other instruments or agreements. The DIP Agent, each DIP Lender and Prepetition Secured Parties, may, in its or their discretion, file a certified copy of this Interim Order in any filing office in any jurisdiction in which any Borrower or Guarantor is organized or has or maintains any DIP Collateral or an office, and each filing office is authorized to accept such certified copy of this Interim Order for filing and recording.

20. Reimbursement of Expenses. All reasonable and documented costs and expenses incurred by the DIP Agent and any DIP Lenders for which the Debtors are obligated under the DIP Documents, shall form a part of the DIP Obligations and shall be paid by the Debtors (without the necessity of filing any application with or obtaining further order from the Court) in accordance with the terms of the DIP Documents; provided that no written objection from the U.S. Trustee or the Committee is received within ten (10) days (the "*Review Period*") after receipt by the U.S. Trustee and counsel to the Committee of invoices thereof (subject in all respects to applicable privilege and work product doctrines). If an objection is received as to any

portion of such invoice, the Debtors shall promptly pay after the Review Period the portion of such invoice not subject to objection and the Bankruptcy Court shall decide any such objection unless otherwise resolved.

21. Amendments to DIP Documents. The Debtors and the DIP Agent and DIP Lenders are hereby authorized to execute, deliver and implement, in accordance with the terms of the DIP Documents and without further order of the Court, any amendments to and modifications of any of the DIP Documents on the following conditions: (a) the amendment or modification must not constitute a material change to the terms of the DIP Documents, (b) copies of the amendment or modification must be served upon counsel for the Committee, if any, the U.S. Trustee and other interested parties specifically requesting such notice, and (c) notice of the amendment is filed with the Court. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court. For purposes hereof, a "material change" shall mean a change that operates to shorten the maturity date of the DIP Loan Facility, increase the aggregate amount of the commitment for DIP Loans under the DIP Loan Facility, increase the rate of interest other than as provided in or contemplated by the DIP Documents, add additional specific events of default, or enlarge the nature and extent of default remedies available to the DIP Agent or any DIP Lender following an Event of Default under (and as defined in) the DIP Agreement. Without limiting the foregoing, any other change that does not materially and adversely affect the rights of the Debtor under the DIP Loan Facility shall not constitute a material change to the terms of the DIP Documents and may be affected by the Debtors and the DIP Lenders without the need for further approval of the Court.

22. Events of Default; Remedies.

(a) Events of Default and Remedies. An Event of Default shall be deemed to have occurred and exist for purposes of this Interim Order upon the occurrence of an "Event of Default" under (and as defined in) the DIP Agreement, including, without limitation, any breach or failure of compliance by any Debtor with respect to any of the provisions of this Interim Order.

(b) Enforcement of Remedies. Upon or after the occurrence of any Event of Default, the DIP Agent and, as applicable, each DIP Lender shall be fully authorized, in its sole discretion, to exercise all remedies available to it under the DIP Documents and applicable law, provided that the DIP Agent shall provide (i) five (5) days' notice to the Debtors (with a copy to counsel to the Committee, if any, and the U.S. Trustee) prior to the termination of the Debtors' right to use Cash Collateral, and (ii) seven (7) days' notice to the Debtors (with a copy to counsel to the Committee, if any, and the U.S. Trustee) prior to the enforcement of the DIP Liens or exercise of any other rights or remedies against the DIP Collateral. The foregoing notice provisions are without prejudice to the rights of the DIP Agent and the DIP Lenders, as applicable, to seek earlier relief from this Court upon appropriate notice and hearing pursuant to the Bankruptcy Code and Bankruptcy Rules. In any hearing regarding the exercise of remedies, unless otherwise ordered by the Court, the sole and exclusive issue shall be whether or not an Event of Default has occurred and is continuing under any of the DIP Documents. Upon or after the occurrence of an Event of Default, and notwithstanding the notice periods referred to above, none of the DIP Agent or any DIP Lender shall be obligated to make any DIP Credit

Extensions to any of the Debtors. The automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement the provisions of this paragraph. Additionally, injunctive or other similar provisions contained in any plan of reorganization or any order confirming any such plan or plans of reorganization, shall not preclude the Prepetition Secured Parties, the DIP Agent or any DIP Lender from exercising the rights and remedies provided to it pursuant to and in accordance with this Interim Order, the Final Order and the DIP Documents.

(c) Application of DIP Collateral Proceeds. Notwithstanding any contrary provision contained in this Interim Order, if the DIP Agent or any DIP Lender, or Prepetition Secured Parties shall proceed to enforce the DIP Liens or any other liens or claims granted to them in respect of any DIP Collateral, then the DIP Agent or any DIP Lender may or Prepetition Secured Party, in its discretion, elect to apply all proceeds of the DIP Collateral or Prepetition Collateral, as applicable, to the payment or cash collateralization of the DIP Obligations or the Prepetition Secured Obligations, as the case may be, then outstanding, if any, in such order of application as the DIP Agent or Prepetition Secured Party, as applicable, may elect in its discretion, and any application to the Prepetition Secured Obligations shall not be deemed to reduce the amount of the DIP Obligations.

(d) Rights Cumulative. The rights, remedies, powers and privileges conferred upon the Prepetition Secured Parties, the DIP Agent and the DIP Lenders pursuant to this Interim Order shall be in addition to, and cumulative with, those contained in the DIP Documents and Existing Facility Agreement, as applicable.

23. Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement the provisions of this Interim Order and the DIP Documents, thereby permitting (a) the DIP Agent and the DIP Lenders, *inter alia*, to receive collections of DIP Collateral for application to the DIP Obligations as provided herein, (b) the DIP Agent to file or record any UCC-1 financing statements, mortgages, deeds of trust, security deeds and other instruments and documents evidencing or validating the perfection of the DIP Liens and (c) the DIP Agent and any DIP Lender, as applicable, to enforce the DIP Liens and exercise any of its or their rights and remedies as set forth in paragraph 22 of this Interim Order and the DIP Documents, all without further order modifying or terminating the automatic stay of section 362 of the Bankruptcy Code.

24. Deadline for Challenge to Prepetition Secured Obligations. In consideration of the DIP Agent's and the DIP Lenders' agreement to provide DIP Credit Extensions pursuant to the DIP Documents, and the Prepetition Secured Parties' consent to the use of Cash Collateral and to the DIP Liens, each Debtor has voluntarily made the stipulations and releases contained in paragraph 4 above (the "*Debtors' Stipulations*"). The Debtors' Stipulations shall be binding on the Debtors, but shall be subject only to the right of a party-in-interest, including any chapter 11 trustee or chapter 7 trustee that is appointed prior to the expiration of the Challenge Deadline (as defined below) to the extent that such party has or is otherwise granted standing to do so, to commence an appropriate adversary proceeding (a "*Challenge*") objecting to the validity, priority, amount or allowance of any Prepetition Secured Obligations, or the extent, validity, priority, perfection or avoidability of any liens granted to the Prepetition Secured Parties on the Prepetition Collateral, or seeking disgorgement of, recharacterization or subordination of, or offset or recoupment, against all or part of the payment

of Prepetition Secured Obligations by a Debtor, the Roll-Up, or asserting any claim under contract, tort or other theory (including, without limitation, lender liability), including, without limitation, theories of recovery or pursuant to section 105 or chapter 5 of the Bankruptcy Code, which adversary proceeding or contested matter must be filed no later than the earlier to occur of (a) seventy-five (75) days from the entry of this Interim Order and (b) sixty (60) days from the date of the formation of any creditors' committee (the "*Challenge Deadline*"); provided, however, that if a chapter 7 trustee or chapter 11 trustee is appointed prior to the Challenge Deadline, the Challenge Deadline applicable to such trustee shall extend until the later of (i) sixty (60) days from such appointment and (ii) the existing Challenge Deadline. If the party-in-interest has not obtained an order from the Court granting such party standing to pursue any such Challenge, then such party shall be required promptly to seek such an order as a condition to its further prosecution of such Challenge, subject to any objection by the Debtors, the Prepetition Secured Parties, or any other interested party, and a party's authority to prosecute such Challenge shall be contingent upon its obtaining such an order. In no event shall the filing of any such Challenge affect any of the rights, privileges, powers or remedies of the Debtors, the Prepetition Secured Parties, the DIP Agent or any DIP Lender under this Interim Order, the DIP Documents, or the Prepetition Secured Agreements. If such Challenge is not timely filed (or, if filed, is denied or overruled), or if standing in connection with any such Challenge is not granted, (i) with respect to any Prepetition Secured Obligations, all of such Prepetition Secured Obligations shall be deemed a legal, valid, binding and enforceable claim that is allowed in full as a secured claim, and not subject to subordination or recharacterization in these cases, in any superseding chapter 7 cases or in any other proceedings; (ii) with respect to any liens granted to secure the Prepetition Secured Obligations, such Prepetition Liens shall be deemed to be legal, valid, binding,

enforceable, perfected (having the priority set forth in this Interim Order) and unavoidable in these cases, in any superseding chapter 7 cases and in any other proceedings; and (iii) all claims and other causes of action (including, without limitation, "lender liability" theories) and causes of action or theories of recovery pursuant to section 105 or chapter 5 of the Bankruptcy Code) against Prepetition Secured Parties shall be forever waived and barred. For the avoidance of doubt, any chapter 7 trustee or chapter 11 trustee appointed or elected prior to the Challenge Deadline, or during the pendency of any adversary proceeding or contested matter commenced by the Committee or any other party in interest to this paragraph 24, shall be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, stipulations and waivers of the Debtors in this Order. If these chapter 11 cases are converted to one or more cases under chapter 7, the trustee shall be permitted to continue prosecution of any pending adversary proceeding or contested matter theretofore commenced pursuant to this paragraph 24 on behalf of Debtors' estates.

25. Service of Order. Promptly after the entry of this Interim Order, the Borrowers shall mail, by May 29, 2015, a copy of this Interim Order, to: (a) the U.S. Trustee; (b) counsel to the DIP Agent and Prepetition Secured Parties; (c) each of the Debtors' twenty (20) largest unsecured creditors; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the United States Attorney for the District of Delaware; (g) the financial institutions where the Debtors maintain deposit and securities accounts; (h) the Debtors' landlords; (i) any known holders of prepetition liens on the Prepetition Collateral; and (j) all parties (if any) who have filed requests for notices under Rule 2002 of the Bankruptcy Rules as



of the date hereof, and shall file a certificate of service regarding same with the Clerk of the Court. Such service shall constitute good and sufficient notice of the Final Hearing.

26. No Deemed Control. Subject to entry of the Final Order, by consenting to this Interim Order, making DIP Credit Extensions to the Borrowers and administering the financing relationship with the Borrowers and Guarantors pursuant to the DIP Documents, neither the DIP Agent nor any DIP Lender shall, solely by reason thereof, be deemed to be in control of any Borrower or Guarantor or any Borrower's or Guarantors' operations, or to be acting as a "responsible person," "managing agent" or "owner or operator" (as such terms are defined in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar state or federal statute) with respect to the operations or management of such Borrower or Guarantor.

27. Binding Effect; Successors and Assigns. Immediately upon entry of this Interim Order by the Court (notwithstanding any applicable law or rule to the contrary), the provisions of this Interim Order shall be binding upon and inure to the benefit of all parties in interest in these chapter 11 cases, including, without limitation, the DIP Agent, each DIP Lender, the Prepetition Secured Parties, the Borrowers, the Guarantors and their respective successors and assigns (including, without limitation, any chapter 11 trustee hereafter appointed or elected for the estate of any Borrower or Guarantor, or any chapter 7 trustee appointed in any superseding chapter 7 case); provided, however that neither the DIP Agent nor any DIP Lender shall have any obligation to make DIP Credit Extensions to, or consent to the use of Cash Collateral by, any chapter 7 or chapter 11 trustee appointed or elected for the estate of any Borrower or Guarantor.

28. Order Controls. In the event of any direct inconsistency between the terms of the DIP Documents and this Interim Order, the provisions of this Interim Order shall govern and control.

29. Final Hearing. The Final Hearing on the Motion shall be held at 10:00 o'clock a.m., on June 16, 2015, Fifth Floor at Courtroom #6, before Judge Christopher S. Sontchi, at the United States Bankruptcy Court, District of Delaware. If any or all of the provisions of this Interim Order are modified, vacated or stayed as the result of any objection timely filed and asserted at the Final Hearing, then, without limiting the provisions of paragraph 31 hereof, any DIP Obligations incurred prior to the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent and each DIP Lender shall be entitled to the protections afforded under section 364(e) of the Bankruptcy Code and to all the rights, remedies, privileges, and benefits, including, without limitation, the DIP Liens and Superpriority DIP Claim granted herein and with respect to all such DIP Obligations.

30. Objection Deadline. If any party in interest shall have an objection to any of the provisions of this Interim Order, such party shall be authorized to assert such objection at the Final Hearing, provided that a written statement setting forth the basis for such objection is filed with the Court, and concurrently served upon: (a) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19899-0035; (b) counsel for Debtors, DLA Piper LLP (US), 203 North LaSalle Street, Suite 1900, Chicago, IL 60601-1293, Attention: Richard A. Chesley, and DLA Piper LLP (US), 1201 N. Market Street, 21st Floor, Wilmington, DE 19801, Attention: R. Craig Martin; and (c) counsel for the DIP Agent, DIP Lenders and Prepetition Secured Parties, Willkie Farr & Gallagher LLP, 787 Seventh Avenue,

New York, New York 10019, Attention: John Longmire, Esq. and Leonard Klingbaum, Esq., and Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware, 19801, Attention: Mark D. Collins; so that such objections and responses are filed on or before 12:00 p.m., prevailing Eastern time on June 11, 2015. Any objecting party should appear at the Final Hearing to assert the basis for such objection before the Court or the Court may deem such objection to have been waived and abandoned by such objecting party.

31. Effect of Appeal. Consistent with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Interim Order are hereafter modified, vacated or stayed on appeal:

(a) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, liability or DIP Liens granted, created or incurred by the Debtors to the DIP Agent and DIP Lenders prior to the effective date of such stay, modification or vacation, or the validity, enforceability or priority of any DIP Liens, priority or right authorized or created under the original provisions of this Interim Order or pursuant to the DIP Documents; and

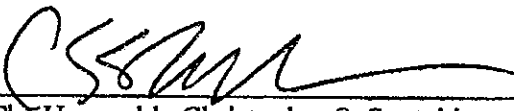
(b) any indebtedness, obligation or liability incurred by the Debtors to the DIP Agent and the DIP Lenders under the DIP Documents prior to the effective date of such stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent and the DIP Lenders shall be entitled to all the rights, remedies, privileges and benefits, including, without limitation, the DIP Liens and priorities granted herein and pursuant to the DIP Documents, with respect to any such indebtedness, obligation or liability. All DIP Credit Extensions under the DIP Documents are made in reliance upon this Interim

Order, and, therefore, the indebtedness resulting from such DIP Credit Extensions prior to the effective date of any stay, modification or vacation of this Interim Order cannot (i) be subordinated, (ii) lose the priority of the DIP Liens, or (iii) be deprived of the benefit of the Superpriority DIP Claim granted to the DIP Agent and DIP Lenders under this Interim Order or the DIP Documents, as a result of any subsequent order in any one of these chapter 11 cases, or any superseding cases, of the Debtors.

32. Effectiveness. This Interim Order shall take effect and be enforceable immediately upon entry hereof notwithstanding any contrary Bankruptcy Rule or Rule of Civil Procedure and there shall be no stay of execution or effectiveness of this Interim Order.

33. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Wilmington, Delaware  
Date: May 28, 2015

  
\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

**Exhibit A**  
**DIP Credit Agreement**

**SENIOR SECURED, SUPERPRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

SENIOR SECURED, SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), dated as of May 28, 2015, among IMRIS, Inc., a Delaware corporation ("IMRIS US"), IMRIS Inc., a Canadian corporation and direct parent company of IMRIS US ("Parent") and NeuroArm Surgical Limited, a Canadian limited company ("NeuroArm", together with Parent and IMRIS US, collectively, the "Borrowers"), Deerfield Special Situations Fund, L.P. as administrative agent and collateral agent (in such capacities, the "DIP Agent") and the lenders set forth on the signature page of this Agreement (such persons and each person which from time to time becomes a party hereto as a lender, the "Lenders", and together with the Borrowers, the "Parties").

**WITNESSETH:**

WHEREAS, on May 25, 2015 (the "Petition Date") the Borrowers, each as a debtor and debtor in possession, filed voluntary petitions for relief under the Bankruptcy Code (such term and other capitalized terms used herein shall have the meanings set forth in Article I of this Agreement) with the United States Bankruptcy Court for the for the District of Delaware (the "Bankruptcy Court") (such proceedings being jointly administered under Case No. 15-11133 are hereinafter referred to collectively as the "Chapter 11 Cases"). The Borrowers continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrowers have requested that the Lenders provide a senior secured, super-priority debtor-in-possession credit facility in an aggregate principal amount of Five Million Three Hundred Sixty-Three Thousand, Four Hundred Thirteen Dollars (\$5,363,413), comprising (a) Nine Hundred Thirty-Nine Thousand, Four Hundred Thirteen Dollars (\$939,413) of Roll-Up Loans, (b) Four Million One Hundred Twenty-Four Thousand Dollars (\$4,124,000) of Imaging and Service Business Loans and (c) Three Hundred Thousand Dollars (\$300,000) Robotics Business Loans, all on a post-petition basis and on the terms and conditions set forth herein; and

WHEREAS, the Lenders are willing to provide such financing only if, among other things, (a) all of the Obligations hereunder and under the other Transaction Documents (i) constitute an allowed super-priority, administrative expense claim in the Chapter 11 Cases pursuant to section 365(c)(1) of the Bankruptcy Code, as more particularly set forth herein and in the Financing Orders; (ii) constitute a super-priority charge under Part IV the *Companies' Creditors Arrangement Act* proceedings in Canada (the "Canadian Proceedings"); and (iii) are secured by valid, perfected Liens on the Collateral to the extent set forth herein and in the Financing Orders; and (b) the financing and the Transaction Documents are authorized and approved by the Financing Orders, as applicable, to be entered by the Bankruptcy Court, and such Financing Orders are acceptable in form and substance to the DIP Agent and the Lenders in their sole discretion.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

**Section 1.1 General Definitions.** Wherever used in this Agreement, the Exhibits or the Schedules attached hereto, unless the context otherwise requires, the following terms have the following meanings:

**"Accountant's Report"** has the meaning given to it in Section 5.1(v)(1).

**"Affiliate"** means, with respect to any Person, any other Person:

(a) that owns, directly or indirectly, in the aggregate more than 10% of the beneficial ownership interest of such Person;

(b) that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person; or

(c) that directly or indirectly is a general partner, controlling shareholder, or managing member of such Person.

**"Agreement Date"** means the date of this Agreement.

**"Applicable Laws"** means all statutes, rules and regulations of any Governmental Authorities in the United States, Canada or elsewhere relating to Parent or its Subsidiaries or the conduct of their respective businesses.

**"Approved Cash Management Arrangements"** means cash management arrangements satisfactory to the DIP Agent and the Initial Lenders in their sole discretion.

**"Approved Cash Management Order"** means a cash management order satisfactory to the DIP Agent and the Initial Lenders in their sole discretion approving the Approved Cash Management Arrangements and directing the Borrowers to comply therewith.

**"A/R Prepayment Amount"** has the meaning given to it in Section 2.3(c)(i).

**"Asset Purchase Agreement"** means that certain Asset Purchase Agreement, dated as of May [ ], 2015, by and among the Borrowers and the buyers identified therein (the **"Buyers"**).

**"Authorizations"** has the meaning given to it in Section 3.1(o).

**"Bankruptcy Code"** means title 11 of the United States Code, as now and hereafter in effect, or any successor statutes.

**"Bankruptcy Court"** has the meaning given to it in the Recitals hereto.

**"Borrower Indemnified Party"** has the meaning given to it in Section 7.11.

**"Borrowers"** has the meaning given to it in the Recitals hereto.

**“Budget”** means the forecast of cash receipts, disbursements, loan balances, and anticipated uses of Loans for the immediately following 13-week period, in form and substance acceptable to the DIP Agent and the Initial Lenders, as updated and approved in accordance with Section 5.1(vi) and the Financing Orders.

**“Business Day”** means a day on which banks are open for business in the City of New York and the City of Winnipeg, Manitoba.

**“Buyers”** has the meaning given to it in the definition of “Asset Purchase Agreement”.

**“Canadian Benefit Plans”** means all plans, arrangements, agreements, programs, policies, practices or undertakings, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, registered or unregistered, to which Parent or any of its Subsidiaries is a party or bound or in which their employees participate or under which Parent or any of its Subsidiaries has, or will have, any liability or contingent liability, or pursuant to which payments are made, or benefits are provided to, or an entitlement to payments or benefits may arise with respect to, any of their employees or former employees, their directors or officers, individuals working on contract with Parent or any of its Subsidiaries or other individuals providing services to Parent or any of its Subsidiaries of a kind normally provided by employees (or any spouses, dependents, survivors or beneficiaries of any such persons).

**“Canadian Court”** means the Court of Queen’s Bench Manitoba.

**“Canadian Orders”** means the Canadian First Recognition Order and the Canadian Second Recognition Order.

**“Canadian First Recognition Order”** means the Order granted by the Canadian Court in the Canadian Proceedings recognizing the Interim Order and approving a super priority debtor in possession charge over the Borrowers’ property in Canada.

**“Canadian Pension Plans”** means all Canadian Benefit Plans which are required to be registered under Canadian provincial or federal pension benefits standards legislation.

**“Canadian Proceedings”** has the meaning given to it in the Recitals hereto.

**“Canadian Second Recognition Order”** means the Order granted by the Canadian Court in the Canadian Proceedings recognizing the Final Order.

**“Carve-Out”** has the meaning given to it in the Financing Orders, as applicable.

**“Case Milestones”** means each of the following deadlines: (a) entry of the Interim Order and the Approved Cash Management Order, each in form and substance satisfactory to the DIP Agent and the Initial Lenders, by the third Business Day following the Petition Date; (b) entry of the Final Order in form and substance satisfactory to the DIP Agent and the Initial Lenders within twenty (20) days after the date of entry of the Interim Order; (c) filing of the Stalking Horse Motion, in form and substance satisfactory to the DIP Agent and the Initial Lenders, by the first Business Day following the Petition Date; (d) entry of an order approving the Stalking Horse Motion and related bidding and sale procedures, in each case, in form and substance



satisfactory to the DIP Agent and the Initial Lenders by June 17, 2015; (e) holding of an auction for the sale of the Borrowers' assets by July 23, 2015; (f) entry of an order approving such sale(s) by July 27, 2015; and (g) closing of such sales by July 31, 2015.

"Cash and Cash Equivalents" means, with respect to any date of determination, cash, cash equivalents, and marketable securities and Permitted Restricted Cash as set forth on Parent's consolidated balance sheet as of such date.

"CFC" has the meaning given to it in Section 3.1(l).

"Chapter 11 Cases" has the meaning given to it in the Recitals hereto.

"Chapter 11 Plan" means a plan of reorganization or a chapter 11 plan of the Borrowers, in form and substance satisfactory to the Existing Lenders and the Initial Lenders, in their sole discretion.

"Closing Fee" has the meaning given to it in Section 2.9(b).

"Code" has the meaning given to it in Section 3.1(l).

"Collateral" means any and all "Collateral" or "DIP Collateral" referred to in the Financing Orders.

"Commitments" means the Roll-Up Loan Commitment, the Robotics Business Loan Commitment and the Imaging and Service Business Loan Commitment.

"Committee" means any official committee of unsecured creditors appointed by the U.S. Trustee or approved by the Bankruptcy Court in the Chapter 11 Cases.

"Debtor Relief Laws" means the Bankruptcy Code, the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and all other domestic or foreign liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement (including under any relevant incorporating statute), rearrangement, receivership, insolvency, reorganization, judicial management, administration or relief of debtors or similar debtor relief laws of the United States, Canada or other applicable jurisdiction from time to time in effect and affecting the rights of creditors generally.

"Default" means any event which, at the giving of notice, lapse of time or fulfillment of any other condition (or any combination of the foregoing), would constitute an Event of Default.

"DIP Agent" has the meaning given to it in the Recitals hereto.

"DIP Superpriority Claim" means the superpriority administrative expense claim granted by the Bankruptcy Court in the Financing Orders in respect of the Obligations, as described in Section 2.10.

"Disbursement" has the meaning given to it in Section 2.2(a).

"Disbursement Date" has the meaning given to it in Section 2.2(a).

"Dollars" and the "\$" sign mean the lawful currency of the United States of America.

"Event of Default" has the meaning given to it in Section 6.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, including the rules and regulations thereunder.

"Existing Credit Agreement" means that certain Facility Agreement, dated as of September 16, 2013 (as amended, restated, supplemented, waived or otherwise modified on or before the Petition Date), by and among Parent, the guarantor parties thereto and the Existing Lenders.

"Existing Lenders" means the lenders from time to time party to the Existing Credit Agreement as of the date hereof.

"FDA" means the U.S. Food and Drug Administration.

"Final Order" means the final order entered by the Bankruptcy Court approving this Agreement.

"Final Payment Date" means the earlier of (a) the date on which the Borrowers repay the Loans (together with any accrued and unpaid Obligations) and (b) the Maturity Date.

"Financing Orders" means: the Interim Order, the Final Order and the Canadian Orders, as applicable at such time.

"First Day Orders" means those orders entered by the Bankruptcy Court on or about the Petition Date, in each case as previously provided to the DIP Agent and the Initial Lenders and acceptable to them in form and substance.

"GAAP" means generally accepted accounting principles consistently applied as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession).

"Government Authority" means any government, quasi-governmental agency, governmental department, ministry, cabinet, commission, board, bureau, agency, court, tribunal, regulatory authority, instrumentality, judicial, legislative, fiscal, or administrative body or entity, whether domestic or foreign, federal, state, provincial or local, having jurisdiction over the matter or matters and Person or Persons in question.

"Guaranties" means the guaranties of the Obligations executed by the Guarantors in favor of the Lenders in the forms delivered to the Lenders on the Agreement Date.

"Guarantors" means IMRIS US, Parent and NeuroArm.

"Guaranty Agreement" means that certain DIP Guaranty Agreement, dated as of [ ], 2015, among the Guarantors (in their capacities as guarantors), the DIP Agent and the Lenders.

"Hedging Obligations" means all liabilities under take-or-pay or similar arrangements or under any interest rate swaps, caps, floors, collars and other interest hedge or protection agreements, treasury locks, equity forward contracts, currency agreements or commodity purchase or option agreements or other interest or exchange rate or commodity price hedging agreements and any other derivative instruments, in each case, whether the Parent and its Subsidiaries are liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which liabilities the Parent or its Subsidiaries otherwise assures a creditor against loss.

"Imaging and Service Business" means the Borrowers' image-guided therapy systems and maintenance service business.

"Imaging and Service Business Loan Commitment" means the commitment of the Lenders to provide Loans in accordance with Section 2.1(b)(i) in an aggregate principal amount of up to \$4,124,000.

"Imaging and Service Business Loans" means term loans in an aggregate principal amount not to exceed the Imaging and Service Business Loan Commitment.

"Indebtedness" means the following:

- (a) all indebtedness for borrowed money;
- (b) the deferred purchase price of assets or services (other than trade payables and other liabilities to employees and officers arising in the ordinary course of business and not related to any financing) which in accordance with GAAP would be shown to be a liability (or on the liability side of a balance sheet);
- (c) all guarantees of Indebtedness;
- (d) the maximum amount of all letters of credit issued or acceptance facilities established for the account of Parent and any of its Subsidiaries, including without duplication, all drafts drawn thereunder (other than letters of credit or acceptance facilities supporting other indebtedness of Parent and any of its Subsidiaries which are otherwise permitted hereunder);
- (e) all capitalized lease obligations;
- (f) all indebtedness of another Person secured by any Lien on any property of Parent or its Subsidiaries, whether or not such indebtedness has been assumed or is recourse (with the amount thereof, in the case of any such indebtedness that has not been assumed by Parent or its Subsidiaries, being measured as the lower of (x) the fair market value of such property and (y) the amount of the indebtedness secured);
- (g) all Hedging Obligations; and

(h) indebtedness created or arising under any conditional sale or title retention agreement.

"Indemnity" has the meaning given to it in Section 7.11.

"Initial Lenders" means the lenders signatory to this Agreement on the Agreement Date.

"Interest Payment Date" has the meaning given to it in Section 2.7.

"Interest Rate" means (a) with respect to the Roll-Up Loans, 19.0% simple interest per annum, (b) with respect to the Imaging and Service Business Loans, 19.0% simple interest per annum and (c) with respect to the Robotics Business Loans, 19.0% simple interest per annum.

"Interim Order" means the interim order entered by the Bankruptcy Court approving this Agreement.

"IP" and "Intellectual Property" have the meanings given to such terms in Section 3.1(k).

"Lender Indemnified Party" has the meaning given to it in Section 7.11.

"Lenders" means the Initial Lenders and any other Person who becomes party to this Agreement from time to time as a Lender.

"Lien" means any lien, pledge, preferential arrangement, mortgage, security interest, deed of trust, charge, assignment, hypothecation, title retention, privilege or other encumbrance on or with respect to property or interest in property having the practical effect of constituting a security interest, in each case with respect to the payment of any obligation with or from the proceeds of, any asset or revenue of any kind.

"Loans" means the Roll-Up Loans and the Multiple Draw Term Loans.

"Loss" has the meaning given to it in Section 7.11.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, condition (financial or otherwise) or assets of Parent or its Subsidiaries, taken as a whole, other than as a result of those events that customarily would occur leading up to the commencement of the Chapter 11 Cases, (b) the validity or enforceability of any provision of any Transaction Document, (c) the ability of the Borrowers to fully and timely perform the Obligations or (d) the rights and remedies of the Lenders under any Transaction Document.

"Maturity Date" means, with respect to Loans and Commitments other than the Robotics Business Loans and the Robotics Business Loan Commitments, the earliest of: (i) the stated maturity date, which shall be August 7, 2015; (ii) the effective date of the Chapter 11 Plan or, if sooner, the date on which the sale of the Borrowers' assets shall have been consummated (or any portion thereof); (iii) the date that is twenty (20) days after the Petition Date, unless on or before such day the Bankruptcy Court shall have entered the Final Order; and (iv) the acceleration of the Loans or termination of the commitments under this Agreement (other than with respect to a

termination of commitments of the Robotics Business Loans prior to August 7, 2015), including, without limitation, as a result of the occurrence of an Event of Default.

“Maximum Available Amount” means the maximum amount of the Imaging and Service Business Loans or Robotics Business Loans, as the context may require, available at any time in accordance with the Budget (less the amount of any such Loans then outstanding), such amount not to exceed the amount of the Imaging and Service Business Loan Commitment or Robotics Business Loan Commitment, respectively, at any time.

“Multiple Draw Term Loans” means the Imaging and Service Business Loans and the Robotics Business Loans.

“Necessary Documents” has the meaning given to it in Section 3.1(i).

“Obligations” means all obligations (monetary or otherwise) of the Borrowers arising under or in connection with the Transaction Documents including each of the Loans and all and any obligations related to the foregoing.

“Organizational Documents” means the articles of organization or incorporation, by-laws, or equivalent documents, each as amended to date, of each Borrower, as the context may require.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, duties, other similar charges or similar levies, and all liabilities with respect thereto, together with any interest, fees, additions to tax or penalties applicable thereto (including by reason of any delay in payment), arising from any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, any Transaction Document (excluding, for greater certainty, any taxes on the general income of the Lenders.)

“Permitted Indebtedness” means the following Indebtedness:

- (a) the Obligations;
- (b) Indebtedness evidenced by capital leases or secured by purchase money Liens approved in writing by the Required Lenders;
- (c) Indebtedness existing as of the Agreement Date and set forth on Exhibit A and paid only pursuant to the provisions of the agreements evidencing such Indebtedness set forth on such Exhibit;
- (d) Indebtedness owed by any Borrower to any other Borrower; and
- (e) guarantees with respect to any Indebtedness that is Permitted Indebtedness.

“Permitted Liens” means:

- (a) Liens existing on the Agreement Date and set forth on Exhibit B attached hereto, and any renewals or extensions thereof, provided that the property covered thereby is not increased;
- (b) Liens in favor of the Lenders and the Existing Lenders;
- (c) statutory Liens created by operation of applicable law;
- (d) Liens arising in the ordinary course of business, consistent with past practice and securing obligations that are not overdue or are being contested in good faith by appropriate proceedings;
- (e) Liens for taxes, assessments or governmental charges or levies not overdue and payable or that are being contested in good faith by appropriate proceedings;
- (f) Liens arising from judgments, decrees or attachments other than under the Chapter 11 Cases;
- (g) Liens in favor of financial institutions arising in connection with accounts maintained in the ordinary course of Parent's and its Subsidiaries' business and consistent with past practice held at such institutions to secure standard fees for services charged by, but not financing made available by, such institutions;
- (h) Liens securing Indebtedness permitted pursuant to clause (ii) of the definition of Permitted Indebtedness;
- (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;
- (j) deposits to secure (i) the performance of tenders, bids, trade contracts, licenses and leases, statutory obligations, surety bonds, performance bonds, bank guaranties and other obligations of a like nature incurred in the ordinary course of business and consistent with past practice, or (ii) indemnification obligations relating to any disposition;
- (k) easements, rights of way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially interfere with the conduct of the business of the applicable Person;
- (l) leases, licenses or subleases granted to others in the ordinary course of business and not interfering in any material respect with the business of Parent and its Subsidiaries;
- (m) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code (or equivalent in foreign jurisdictions) on items in the course of collection; and
- (n) licenses of intellectual property granted by Parent or any of its Subsidiaries required in connection with the sale of Parent's products in the ordinary course of



business and not interfering in any material respect with the conduct of business of Parent and its Subsidiaries.

"Permitted Restricted Cash" means restricted cash as set forth on Parent's consolidated balance sheet to the extent such cash is restricted for the payment of Parent's suppliers and provided that Parent also has entered agreements with its customers guaranteeing payment on delivery of Parent's products and provided the terms and conditions of such payment are the same as the conditions of release of the restricted cash.

"Person" means and includes any natural person, individual, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

"Petition Date" has the meaning given to it in the Recitals hereto.

"PFIC" has the meaning given to it in Section 3.1(l).

"Prior Liens" means any valid, duly perfected, non-avoidable Liens, only to the extent permitted to be in existence pursuant to the Existing Credit Agreement, in existence as of the Petition Date (or valid and non-avoidable Liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date the priority and perfection of which relates back to a date prior to the Petition Date as permitted but section 546(b) of the Bankruptcy Code, and, to the extent applicable, section 362(b)(18) of the Bankruptcy Code) including, without limitation, valid, duly perfected, non-avoidable pre-Petition Date Liens referred to on any schedule to any lender or owner title insurance policy of any of the property of the Borrowers.

"Register" has the meaning given to it in Section 1.4(b).

"Required Lenders" means Lenders that, taken together, hold more than 50% of the aggregate outstanding principal amount of the Roll-Up Loans and more than 50% of the Multiple Draw Loan Commitments and the Loans extended thereunder; provided, that in the event that there is no Multiple Draw Loan Commitment then in effect, then more than 50% of the Multiple Draw Loans then outstanding.

"Robotics Business" means the surgeon-controlled surgical robot design and manufacture business.

"Robotics Business Loan Commitment" means the commitment of the Lenders to provide Loans in accordance with Section 2.1(b)(ii) in an aggregate principal amount of up to \$300,000 or such greater amount as the Lenders may agree in their sole discretion from time to time and subject to approval by the Bankruptcy Court.

"Robotics Business Loans" means term loans in an aggregate principal amount not to exceed the Robotics Business Loan Commitment.

"Roll-Up Loan Commitment" means the commitment of the Lenders to provide Loans in accordance with Section 2.1(a) in an aggregate principal amount of up to \$939,413.

"Roll-Up Loans" means term loans in an aggregate principal amount not to exceed the Roll-Up Loan Commitment.

"SEC" means the United States Securities and Exchange Commission.

"SEC Reports" means the annual and other reports filed or furnished by Parent with or to the SEC under the Exchange Act.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

"Stalking Horse Motion" means the motion of the Borrowers, in form and substance satisfactory to the Initial Lenders and the Buyers, filed on or about the Petition Date, seeking approval of the terms of sale procedures, bid protections and related relief in connection with the Asset Purchase Agreement.

"Subsidiary or Subsidiaries" means, as to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"Tax Affiliate" means (a) Parent and its Subsidiaries and (b) any Affiliate of any Borrower with which such Borrower files or is required to file consolidated, combined or unitary tax returns.

"Taxes" means all present or future taxes, levies, imposts, stamp or other duties, fees, assessments, deductions, withholdings, and other charges imposed by any Government Authority, and all liabilities with respect thereto, together with any interest, fees, additions to tax or penalties applicable thereto (including by reason of any delay in payment).

"Tax Returns" has the meaning given to it in Section 3.1(l).

"Test Period" means each one calendar week period (a Sunday through the following Saturday) commencing on May 31, 2015.

"Transaction Documents" means this Agreement, the Guaranty Agreement, the Financing Orders, the Approved Cash Management Order and any other order, document or instrument delivered in connection with any of the foregoing and dated the Agreement Date or subsequent thereto, whether or not specifically mentioned herein or therein, in each case as amended, amended and restated, supplemented, waived or otherwise modified at any time and from time to time.

"U.S. Trustee" means the office of the United States Trustee for the District of Delaware.



**"Variance Report"** mean, for any Test Period, a report setting forth the variances (as a percentage) between actual results and the corresponding anticipated amounts set forth in the Budget for such period, as set forth in Section 5.1(vii).

**Section 1.2 Interpretation.** In this Agreement, unless the context otherwise requires, all words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties requires and the verb shall be read and construed as agreeing with the required word and pronoun; the division of this Agreement into Articles and Sections and the use of headings and captions is for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions; the words "herein," "hereof," "hereunder," "hereinafter" and "hereto" and words of similar import refer to this Agreement as a whole and not to any particular Article or Section hereof; the words "include," "including," and derivations thereof shall be deemed to have the phrase "without limitation" attached thereto unless otherwise expressly stated; references to a specified Article, Exhibit, Section or Schedule shall be construed as a reference to that specified Article, Exhibit, Section or Schedule of this Agreement; and any reference to any of the Transaction Documents means such document as the same shall be amended, supplemented or modified and from time to time in effect. In the event of a conflict between this Agreement and any Financing Order, the applicable Financing Order shall govern.

**Section 1.3 Business Day Adjustment.** If the day by which a payment is due to be made is not a Business Day, that payment shall be made by the next succeeding Business Day unless that next succeeding Business Day falls in a different calendar month, in which case that payment shall be made by the Business Day immediately preceding the day by which such payment is due to be made.

**Section 1.4 Register.**

(a) Parent shall record on its books and records the amount of the Loans, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding.

(b) Parent shall establish and maintain at its address referred to in Section 7.1: (i) a record of ownership (the "**Register**") in which Parent agrees to register by book entry the interests (including any rights to receive payment of principal and interest hereunder) of each Lender having a Roll-Up Loan Commitment and Multiple Draw Term Loan Commitment, and the amount of Loans extended by such Lenders under such Commitments, and any assignment of any such interest; and (ii) accounts in the Register in accordance with its usual practice in which it shall record (A) the names and addresses of the Lenders (and any change thereto pursuant to this Agreement), (B) the amount of any principal or interest due and payable or paid and (C) any other payment received by the Lenders from the Borrowers and its application to the Loans.

**Section 1.5 Definition of "Knowledge."** For purposes of the Transaction Documents, whenever a representation or warranty is made to a Borrower's knowledge or awareness, to the "best of" a Borrower's knowledge, or with a similar qualification, knowledge or awareness means such knowledge of such fact or other matter as would have been discovered after a reasonable inquiry of any of the officers, directors, employees and consultants of a Borrower as

of the applicable date who would be expected to have knowledge or awareness of such fact or matter under the circumstances.

## ARTICLE 2 AGREEMENT FOR THE LOAN

### Section 2.1 Use of Proceeds.

(a) On the Disbursement Date in respect of the Roll-Up Loans, the proceeds of the Roll-Up Loans solely shall be used to refinance Nine Hundred Thirty-Nine Thousand, Four Hundred Thirteen Dollars (\$939,413) of the outstanding Revolving Loans (as defined in the Existing Credit Agreement) under the Existing Credit Agreement.

(b) The proceeds of (i) the Imaging and Service Business Loans shall be used to (A) provide for the ongoing working capital and general corporate and operating purposes of the Borrowers' Imaging and Service Business during the pendency of the Chapter 11 Cases and the Canadian Proceedings in accordance with, and subject to, the Budget and solely to the extent relating to such Imaging and Service Business, (B) pay fees, interest and expenses associated with the Loans and the Existing Credit Agreement, and (C) pay the Carve-Out, including without limitation the payment of the fees of the U.S. Trustee's office, in each case, in accordance with the Budget, and (ii) the Robotics Business Loans solely shall be used to provide ongoing working capital of the Borrowers' Robotics Business during the pendency of the Chapter 11 Cases and the Canadian Proceedings in accordance with, and subject to the Budget and solely to the extent relating to such Robotics Business.

### Section 2.2 Disbursement.

(a) Subject to satisfaction of each of the conditions set forth herein, the Lenders shall advance Loans to the Borrowers (each such advance, a "Disbursement") in accordance with this Section 2.2. The date of any Disbursement shall be referred to herein as the "Disbursement Date".

(b) Subject to satisfaction of each of the conditions set forth in Section 4.1, each Lender severally agrees to make Roll-Up Loans in an amount equal to the Roll-Up Loan Commitment or such lesser amount as set forth in the Interim Order. The Borrowers are allowed one (1) Disbursement under the Roll-Up Loan Commitment and the Roll-Up Loan Commitment will be deemed to be \$0 after such Disbursement.

(c) Subject to satisfaction of each of the conditions set forth in Section 4.2, each Lender severally agrees to make Imaging and Service Business Loans to the Borrowers in amounts not to exceed the Maximum Available Amount attributable to the Imaging and Service Business Loans or such lesser amount as set forth in the Financing Orders, no later than two (2) Business Days after receiving a notice of borrowing duly executed by the chief executive officer of Parent and substantially in the form of Exhibit C hereto. Such Loans may be made in one or more Disbursements in the aggregate not to exceed the Imaging and Service Business Loan Commitment. Each Lender's share of such Imaging and Service Business Loan shall be determined by its pro rata share of the Imaging and Service Business Loan Commitments as such share is set forth on Schedule 2 hereto.

(d) Subject to satisfaction of each of the conditions set forth in Section 4.2, each Lender severally agrees to make Robotics Business Loans to the Borrowers in amounts not to exceed the Maximum Available Amount attributable to the Robotics Business Loans or such lesser amount as set forth in the Financing Orders, no later than two (2) Business Days after receiving a notice of borrowing duly executed by the chief executive officer of Parent and substantially in the form of Exhibit C hereto. Such Loans may be made in one or more Disbursements in the aggregate not to exceed the Robotics Business Loan Commitment. Each Lender's share of such Robotics Business Loan shall be determined by its pro rata share of the Robotics Business Loan Commitments as such share is set forth on Schedule 2 hereto.

(e) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 3 p.m. New York City time, to the account of the applicable Borrower most recently designated by it for such purpose by notice to the Lenders; provided that such account and all sums on deposit shall be subject to a perfected first priority Lien in favor of the Lenders.

### Section 2.3 Payment.

(a) The Borrowers shall pay to the Lenders the outstanding principal amount of the Loans on the earlier of (i) the Final Payment Date and (ii) the date the principal amount of the Loans becomes due and payable following an Event of Default.

(b) Once repaid, Loans may not be reborrowed.

(c) Except as set forth in the last sentence of this clause (c), within two (2) Business Days receipt of any payments on account of accounts receivable (except for advance deposits remitted by customers, but including such deposits following ordinary course billing for goods or services and recognition by the Borrowers that such funds constitute payments on account of such goods or services) otherwise due to a Borrower, the Borrowers may either (i) pay to the Lenders an amount equal to one hundred percent (100%) of such payments (the "A/R Prepayment Amount"), which such A/R Prepayment Amount shall be applied by the Lenders to reduce the outstanding principal balance on the Loans in the order and as to the type of Loan as determined by the DIP Agent or (ii) deposit such amount into a deposit account subject to a blocked account agreement in favor of the DIP Agent on behalf of the Lenders. If no Default or Event of Default is continuing, to the extent such deposits are subject to a blocked account agreement in accordance with clause (ii) above, the Borrowers may use such funds in accordance with the Budget.

(d) (i) Unless previously terminated, (A) the Imaging and Service Business Loan Commitments shall automatically terminate on the Business Day prior to the Final Payment Date and (B) the Robotics Business Loan Commitments shall automatically terminate on the date that is twenty-eight (28) days after the date of this Agreement unless such date is extended by the Lenders in their sole discretion and subject to approval by the Bankruptcy Court.

(ii) The Borrowers shall notify the Lenders of any election to terminate or reduce the Multiple Draw Term Loan Commitments at least four (4) Business Days prior to

the effective date of such termination or reduction, specifying such election and the effective date thereof.

(iii) The Borrowers hereby unconditionally promise to pay to the Lenders the then unpaid principal amount and all accrued but unpaid interest and fees in respect of each Loan on or prior to the Final Payment Date applicable to such Loans.

(iv) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, each applicable Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Lender and reasonably acceptable to such Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(v) The Borrowers shall have the right at any time and from time to time to prepay any Loans in whole or in part, without premium or penalty (other than interest that is accrued and outstanding at the time of such prepayment).

**Section 2.4 Time and Place.** Payments of any amounts due to the Lenders under this Agreement shall be made in Dollars in immediately available funds prior to 11:00 a.m. New York City time on such date that any such payment is due, at such bank or places as the Lenders shall from time to time designate in writing prior to the date such payment is due. The Borrowers shall pay all and any costs (administrative or otherwise) imposed by banks, clearing houses, or any other financial institution, in connection with making any payments under any of the Transaction Documents, except for any costs imposed by the Lenders' banking institutions.

**Section 2.5 Taxes, Duties and Fees.**

(a) Any and all payments under any Transaction Document shall be made, in accordance with this Section 2.5, free and clear of and without deduction for any withholding Taxes except as required by applicable law. If any Taxes are required by law to be withheld from any amounts payable under a Transaction Document, (i) the amount payable shall be increased by as much as shall be necessary so that, after making all required withholdings (including withholdings on the additional amounts), the payee shall receive an amount equal to the sum it would have received had no such withholdings been made (any and all such additional amounts payable shall hereafter be referred to as the "Additional Amounts"), (ii) the payor shall make such withholdings, and (iii) the payor shall pay the full amount withheld to the relevant taxing or other authority in accordance with applicable law. Within thirty (30) days after the date of any payment of such Taxes, the payor shall furnish to the applicable payee the original or a certified copy of a receipt evidencing payment thereof or other evidence of such payment reasonably satisfactory to such payee. Parent agrees to file, on behalf of each Lender, any necessary withholding Tax returns or statements when due, and will file any information reports with respect to its withholding and other obligations hereunder or under any other Transaction Document as may be required under Canadian law.



(b) In addition, Parent agrees to pay, and authorizes the applicable payee to pay in its name (but without duplication), all Other Taxes. Within thirty (30) days after the date of any payment of Other Taxes, Parent shall furnish to the applicable payee the original or a certified copy of a receipt evidencing payment thereof or other evidence of such payment reasonably satisfactory to such payee.

(c) Parent shall reimburse and indemnify, within ten (10) days after receipt of demand therefor, each payee for all withholding Taxes and Other Taxes to which this Section 2.5 applies, whether or not such Taxes were correctly or legally imposed or asserted. A certificate of the applicable payee(s) setting forth the amounts to be paid thereunder and delivered to Parent shall be conclusive, binding and final for all purposes, absent manifest error.

(d) If any Lender determines in good faith that it has received a refund from a Government Authority relating to Taxes in respect of which Parent paid Additional Amounts or made a payment pursuant to Section 2.5(c), such Lender shall promptly pay such refund to Parent, net of all out-of-pocket expenses (including any Taxes imposed thereon) of such Lender incurred in obtaining such refund, and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund); provided that Parent, upon the request of such Lender, agrees to repay the amount paid over to Parent (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Lender if such Lender is required to repay such refund to such Governmental Authority. Nothing in this Section shall require any Lender to disclose any information it deems confidential (including, without limitation, its tax returns) to any Person, including Parent.

**Section 2.6 Costs, Expenses and Losses.** If, as a result of any failure by any Borrower to pay any sums due under this Agreement on the due date therefor (after the expiration of any applicable grace periods), the Lenders shall incur commercially reasonable costs, expenses and/or losses, by reason of the liquidation or redeployment of deposits from third parties or in connection with obtaining funds to maintain any Disbursement, the Borrowers shall pay to the Lenders upon request by the Lenders, the amount of such costs, expenses and/or losses within five (5) Business Days after receipt by the Borrowers of a certificate from the Lenders setting forth in reasonable detail such costs, expenses and/or losses, along with supporting documentation. For the purposes of the preceding sentence, "costs, expenses and/or losses" shall include, without limitation, any interest paid or payable to carry any unpaid amount and any loss, premium, penalty or expense which may be incurred in obtaining, liquidating or employing deposits of or borrowings from third parties in order to make, maintain or fund the Loans or any portion thereof.

**Section 2.7 Interest.**

(a) The outstanding principal amount of (a) the Roll-Up Loans shall bear interest from the Disbursement Date of such Loan at the Interest Rate applicable to the Roll-Up Loans (calculated on the basis of the actual number of days elapsed) and (b) each Multiple Draw Term Loan shall bear interest from the Disbursement Date of such Loan at the Interest Rate applicable to such Multiple Draw Term Loan (calculated on the basis of the actual number of days elapsed). Accrued interest shall be paid in cash monthly in arrears on the first Business Day of each month (each, an "Interest Payment Date"). Accrued interest will be paid in Dollars.

(b) For the purposes of this Agreement, whenever interest is calculated on the basis of a period which is less than the actual number of days in a calendar year, each rate of interest determined pursuant to such calculation is, for the purposes of the Interest Act (Canada), equivalent to such rate multiplied by the actual number of days in the calendar year in which such rate is to be ascertained and divided by the number of days used as the basis of such calculation.

(c) Notwithstanding anything to the contrary contained in any Transaction Document (even if any such provision expressly declares that it controls all other provisions of the Transaction Documents), in no contingency or event whatsoever shall the aggregate "interest" (as that term is defined in Section 347 of the *Criminal Code* (Canada)) exceed the effective annual rate of interest on the "credit advanced" (as defined therein) lawfully permitted under Section 347 of the *Criminal Code* (Canada) including resulting in an amount or a rate that would result in the receipt by any Lender of interest at a criminal rate, as the terms "interest" and "criminal rate" are defined under the *Criminal Code* (Canada), and all provisions of the Transaction Documents in respect of the contracting for, charging, or receiving compensation for the use, forbearance, or detention of money shall be limited as provided by this section. In the event any such interest is paid to any Lender by any Borrower in an amount or at a rate which would exceed the foregoing maximum rate in violation of applicable law in Canada, any Lender, then, notwithstanding any entry on any Lender's books otherwise, such excess shall conclusively be deemed to be automatically applied to any unpaid amount of the Obligations other than interest, in inverse order of maturity, or if the amount of such excess exceeds said unpaid amount, such excess shall be refunded to such Borrower. The effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term of the Roll-Up Loans and the Multiple Draw Term Loans, if applicable, and in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by any Lender will be conclusive for the purposes of such determination.

**Section 2.8 Interest on Late Payments.** Without limiting the remedies available to the Lenders under the Transaction Documents or otherwise, to the maximum extent permitted by applicable law, if an Event of Default has occurred and is continuing, the Borrowers shall pay, in respect of principal and interest on the Loans outstanding under this Agreement, at the rate per annum equal to the Interest Rate applicable thereto plus ten percent (10%) for so long as such Event of Default is continuing. Such interest shall be payable on demand. For the purposes of this Section 2.8, the Borrowers shall not be deemed to have failed to make a required payment of principal or interest with respect to the Loans when due if they have initiated such payment and receipt of such payment by the Borrowers is delayed due to circumstances beyond the control of the Borrowers and for a period of one Business Day after such circumstances are no longer continuing.

**Section 2.9 Fee and Costs.**

(a) From time to time upon demand, the Borrowers shall reimburse the Lenders for their costs and expenses, including reasonable attorneys' fees in connection with the Transaction Documents and any of the administration, enforcement, compliance or otherwise relating thereto.

(b) The Borrowers will pay to the Initial Lenders in full in cash on the Agreement Date a fee (the "Closing Fee") in an amount equal to 2.0% of the Multiple Draw Term Loan Commitments. The Closing Fee will be fully earned and due and payable on the Agreement Date and will be non-refundable once paid.

**Section 2.10 Superpriority Nature of Obligations.** Subject to the terms of the Financing Orders, as applicable, all Obligations hereunder and under the other Transaction Documents shall: (a) constitute an allowed superpriority administrative expense claim against the Borrowers with priority in the Chapter 11 Cases over any and all administrative expense claims and unsecured claims against the Borrowers and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in, arising under, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(b), 506, 507(a), 507(b), 546(c), 546(d), 726(b), 1113 or 1114 respectively, of the Bankruptcy Code, subject only to the Carve-Out and Prior Liens; and (b) constitute a superpriority debtor in possession charge in the Canadian Proceedings against the property of the Borrowers in Canada now existing or hereafter arising, of any kind or nature whatsoever subject only to the priority of the administrative charge granted in the Canadian Proceedings.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

**Section 3.1 Representations and Warranties of the Borrowers.** The Borrowers represent and warrant as of the Agreement Date and on each day on which the Borrowers request or receive any Disbursements, that:

(a) each Borrower is conducting its business in compliance with its Organizational Documents, which are in full force and effect with no material defaults outstanding thereunder;

(b) no Default or Event of Default (or any other material default or event of default, however described) has occurred under any of the Transaction Documents;

(c) [Reserved];

(d) the obligation of the Borrowers to make any payment under this Agreement (together with all charges in connection therewith) is absolute and unconditional, and there exists no right of setoff or recoupment, counterclaim, cross-claim or defense of any nature whatsoever to any such payment;

(e) no Indebtedness of any Borrower exists other than Permitted Indebtedness;

(f) each Borrower is validly existing as a juridical entity, in good standing under the laws of the jurisdiction of its organization. Each Borrower has full power and authority to own its properties and conduct its business, and is duly qualified to do business as a foreign entity and is in good standing (or equivalent concept) in each jurisdiction in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would have a Material Adverse Effect;

(g) other than the Chapter 11 Cases and the Canadian Proceedings, there is not pending, or, to the knowledge of any Borrower, threatened, any action, suit or other proceeding before any Government Authority (i) to which a Borrower is a party or (ii) which has as the subject thereof any assets owned by a Borrower. There are no current, or, to the knowledge of any Borrower, pending, legal, governmental or regulatory enforcement actions, suits or other proceedings to which a Borrower or any of its assets is subject;

(h) subject to the entry of the Financing Orders, the Transaction Documents have been duly authorized, executed and delivered by each Borrower, as applicable, and constitute the valid, legal and binding obligation of each Borrower enforceable in accordance with their terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally and applicable equitable principles (whether considered in a proceeding at law or in equity). The execution, delivery and performance of the Transaction Documents by the Borrowers and the consummation of the transactions therein contemplated will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, other than Liens in favor of the Lenders, upon any assets of any Borrower pursuant to, any agreement to which a Borrower is a party or by which a Borrower is bound or to which any of the assets of any Borrower are subject, (ii) result in any violation of or conflict with the provisions of the Borrowers' Organizational Documents or (iii) result in the violation of any law or any judgment, order, rule, regulation or decree of any Government Authority. Subject to the entry of the Financing Orders, no consent, approval, authorization or order of, or registration or filing with any Government Authority is required for the execution, delivery and performance of any of the Transaction Documents or for the consummation by the Borrowers of the transactions contemplated hereby except for such registrations and filings in connection with the entry into the Transaction Documents that are necessary to comply with applicable federal, state or provincial securities laws and filings contemplated by the Financing Orders and each Borrower has the power and authority to enter into the Transaction Documents and to consummate the transactions contemplated under the Transaction Documents;

(i) subject to the entry of the Financing Orders, each Borrower holds, and is operating in compliance in all material respects with, all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders of any Government Authority (collectively, "Necessary Documents") required for the conduct of its business and all Necessary Documents are valid and in full force and effect; and no Borrower has received written notice of any revocation or modification of any Necessary Document, and no Borrower has reason to believe that any Necessary Document will not be renewed in the ordinary course; and each Borrower is in compliance in all material respects with all applicable federal, state, provincial, local and foreign laws, regulations, orders and decrees applicable to the conduct of its business;

(j) each Borrower has good and marketable title to all of its assets free and clear of all Liens except Permitted Liens and Prior Liens. The property held under lease by each Borrower is held under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of any Borrower;



(k) each Borrower owns or has the right to use pursuant to a valid and enforceable written license, implied license or other legally enforceable right, all of the Intellectual Property (as defined below) that is necessary for the conduct of its business as currently conducted (the "IP"). The IP (excluding third-party IP that a Borrower has a right to use pursuant to a valid and enforceable written license, implied license or other legally enforceable right) that is registered with or issued by a Government Authority is valid and enforceable; there is no outstanding, pending, or, to the knowledge of any Borrower, threatened action, suit, other proceeding or claim by any third person challenging or contesting the validity, scope, use, ownership, enforceability, or other rights of any Borrower in or to any IP (except for any rejections or objections that may have been issued by the applicable patent, trademark or intellectual property office in the ordinary course of prosecution of applications for registrations for IP) and no Borrower has received any written notice regarding any such action, suit, or other proceeding. No Borrower has infringed or misappropriated any material rights of others. There is no pending or, to the knowledge of any Borrower, threatened action, suit, other proceeding or claim that any Borrower infringes upon, violates or uses the Intellectual Property rights of others without authorization, and no Borrower has received any written notice regarding any such action, suit, other proceeding or claim. Except for non-exclusive rights granted by the Borrowers to their customers, distributors, resellers and technology collaborators in respect to their products and technologies in the course of licensing, selling and developing such products and technologies, no Borrower is a party to or bound by any option, license or agreement with respect to IP. The term "Intellectual Property" as used herein means (i) all patents, patent applications, patent disclosures and inventions (whether patentable or unpatentable and whether or not reduced to practice), (ii) all trademarks, service marks, trade dress, trade names, slogans, logos, and corporate names and Internet domain names, together with all of the goodwill associated with each of the foregoing, (iii) copyrights, copyrightable works, and licenses, (iv) registrations and applications for registration for any of the foregoing, (v) computer software (including but not limited to source code and object code), data, databases, and documentation thereof, (vi) trade secrets and other confidential information, (vii) other intellectual property, and (viii) copies and tangible embodiments of the foregoing (in whatever form and medium).

(l) No Borrower is in violation of its Organizational Documents except for such violation as would not result in a Material Adverse Effect.

(m) all income and other material Tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliates have been filed with the appropriate Government Authorities, all such Tax Returns are true and correct in all material respects, and all Taxes, assessments and other governmental charges and impositions reflected therein and all other material Taxes, assessments and other governmental charges otherwise due and payable have been paid prior to the date on which any liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. As of the Agreement Date, the Borrowers have no knowledge of any tax deficiency with respect to its taxes which, if determined adversely, could reasonably be expected to be materially adverse to the Borrowers. Based on its current expectations, the Borrowers will not be "passive foreign investment company" ("PFIC") within the meaning of Section 1297 of the U.S. Internal Revenue Code of 1986, as amended (the "Code") for the fiscal year ending December 31, 2014 and does not currently expect to be a PFIC

in any subsequent fiscal year, and does not own any direct or indirect equity interest (or option to acquire equity interests) in any entity that is expected to be a PFIC in respect of its current or any subsequent fiscal year. The Borrowers are not a "controlled foreign corporation" ("CFC") within the meaning of Section 957(a) of the Code, and does not own 10% or more of the voting shares of any entity that is a CFC;

(n) no Borrower has granted rights to develop, manufacture, produce, assemble, distribute, license, market or sell its products, services or Intellectual Property to any other Person and is not bound by any agreement that affects the exclusive right of a Borrower to develop, manufacture, produce, assemble, distribute, license, market or sell its products, services or Intellectual Property other than for (i) such distribution agreements entered into by any of the Borrowers in the ordinary course of business for the distribution of its products; and (ii) such research agreements entered into by any of the Borrowers in the ordinary course of business with hospitals, universities and other educational institutions;

(o) each Borrower: (i) at all times has complied in all material respects with all Applicable Laws, (ii) has not received any warning letter or other correspondence or notice from the FDA or from any other Government Authority alleging or asserting noncompliance with Applicable Laws; (iii) possesses and complies in all material respects with all licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any Applicable Laws (together, the "Authorizations") which are valid and in full force and effect and has not received any notice from the FDA or any other Government Authority alleging or asserting noncompliance with any Authorizations; (iv) has not received written notice that any Government Authority has taken, is taking, or intends to take action to limit, suspend, modify or revoke any Authorization and the Borrowers have no knowledge that any Government Authority is considering such action; and (v) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations, except as would not have a Material Adverse Effect. There is no false or misleading information or significant omission in any of the submissions by any Borrower to the FDA or any other Government Authority. Each Borrower has fulfilled and performed its obligations under all Authorizations, and no event has occurred or condition or state of facts exists which would constitute a breach or default under, or would cause a revocation or termination of, any Authorization;

(p) the financial statements of Parent dated as of March 31, 2015, annexed as Exhibit D, together with the related notes that fairly present the financial condition of Parent and its Subsidiaries as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with GAAP consistently applied throughout the periods involved, subject, in the case of unaudited financial statements, to year-end adjustments; and, except as disclosed in such Exhibit D, there are no material off-balance sheet arrangements or any other relationships with unconsolidated entities or other persons, that may have a current or future effect on the Borrowers' financial condition, results of operations, liquidity, capital expenditures, capital resources or significant components of revenue or expenses;

(q) Parent maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with

management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for material assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(r) to the knowledge of the Borrowers, (i) no "prohibited transaction" as defined under Section 406 of ERISA or Section 4975 of the Code, or any individual or class exemption issued and not exempt under ERISA Section 408 and the regulations and published interpretations thereunder has occurred with respect to any Employee Benefit Plan, except as for such transactions that would not have a Material Adverse Effect, (ii) at no time within the last seven (7) years has any Borrower or any ERISA Affiliate maintained, sponsored, participated in, contributed to or has or had any liability or obligation in respect of any Employee Benefit Plan subject to Section 302 of ERISA, Title IV of ERISA, or Section 412 of the Code or any "multiemployer plan" as defined in Section 3(37) of ERISA or any multiple employer plan for which any Borrower or any ERISA Affiliate has incurred or could incur liability under Section 4063 or 4064 of ERISA, (iii) no Employee Benefit Plan represents any current or future liability for retiree health, life insurance, or other retiree welfare benefits except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law, (iv) each Employee Benefit Plan is and has been operated in compliance with its terms and all applicable laws, including but not limited to ERISA and the Code, except for such failures to comply that would not have a Material Adverse Effect, (v) no event has occurred (including a "reportable event" as such term is defined in Section 4043 of ERISA) and no condition exists that would subject any Borrower or any ERISA Affiliate to any tax, fine, lien, penalty or liability imposed by ERISA, the Code or other applicable law, except for any such tax, fine, lien, penalty or liability that would not, individually or in the aggregate, have a Material Adverse Effect, (vi) the Borrowers do not maintain any Foreign Benefit Plan, and (vii) the Borrowers do not have any obligations under any collective bargaining agreement. As used in this clause (r), "Employee Benefit Plan" means any material "employee benefit plan" within the meaning of Section 3(3) of ERISA, including, without limitation, all stock purchase, stock option, stock based severance, employment, change in control, medical, disability, fringe benefit, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, under which (A) any current or former employee, director or independent contractor of Parent or any of its Subsidiaries has any present or future right to benefits and which are contributed to, sponsored by or maintained by Parent or any of its Subsidiaries or (B) Parent or any of its Subsidiaries has had or has any present or future obligation or liability; "ERISA" means the Employee Retirement Income Security Act of 1974, as amended; "ERISA Affiliate" means any member of Parent's controlled group as defined in Code Section 414 (b), (c), (m) or (o); and "Foreign Benefit Plan" means any Employee Benefit Plan established, maintained or contributed to outside of the United States of America or which covers any employee working or residing outside of the United States;

(s) no Borrower has at any time in the past or present established or been associated with any Canadian Pension Plans or any Canadian Benefit Plans;

(t) the Borrowers do not, and have not ever, sponsored, administered, participated in or contributed to a retirement or pension arrangement that provides defined benefits to employees or former employees of a Borrower;

(u) the organizational chart attached hereto as Exhibit E describes the relationship between the Parent and its Subsidiaries;

(v) subsequent to December 31, 2012, Parent has not declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there has not been any change in its capital stock, or any issuance of options, warrants, convertible securities or other rights to purchase its capital stock;

(w) all of the issued and outstanding shares of capital stock of Parent are duly authorized and validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state and foreign securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing. There are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of any shares of common stock pursuant to the Organizational Documents or any agreement to which Parent or any of its Subsidiaries is a party or by which Parent or any of its Subsidiaries is bound. All of the issued and outstanding shares of capital stock of each of Parent's Subsidiaries have been duly and validly authorized and issued and are fully paid and nonassessable, and Parent owns of record and beneficially, free and clear of any claims, Liens (other than Permitted Liens and Prior Liens) and voting proxies, all of the issued and outstanding shares of such stock;

(x) all products designed, developed, manufactured, prepared, assembled, packaged, tested, labeled, distributed or marketed by or on behalf of the each Borrower that are subject to the jurisdiction of the FDA or a comparable government authority have been and are being designed, developed, tested, manufactured, prepared, assembled, packaged, distributed, labeled and marketed in compliance with the Federal Food, Drug and Cosmetic Act and the rules and regulations promulgated thereunder and all other Applicable Laws and Authorizations (each a "Requirement of Law"), including, without limitation, clinical and non-clinical evaluation, product approval or clearance, good manufacturing practices, labeling, advertising and promotion, record-keeping, establishment registration and device listing, reporting of recalls, and adverse event reporting, and have been and are being tested, investigated, designed, developed, manufactured, prepared, assembled, packaged, labeled, distributed, marketed, and sold in compliance with each applicable Requirement of Law;

(y) (i) each Borrower and its contract manufacturers are, and have been for the past six (6) calendar years, in compliance with, and each of its products in current commercial distribution is designed, manufactured, prepared, assembled, packaged, labeled, stored, installed, serviced, and processed in compliance with, the Quality System Regulation set forth in 21 C.F.R. Part 820, or comparable quality management system, including, but not limited to, ISO 13485, as applicable, (ii) each Borrower is in compliance with the written procedures, record-keeping and reporting requirements required by the FDA or any comparable government authority pertaining to the reporting of adverse events and recalls involving any of Parent's products, including, as the case may be, Medical Device Reporting set forth in 21



C.F.R. Part 803 and Reports of Corrections and Removals set forth in 21 C.F.R. Part 806, (iii) each Borrower's products are and have been labeled, promoted, and advertised in accordance with their Permit or within the scope of an exemption from obtaining such Permit, and (iv) each Borrower's establishments are registered with the FDA, as applicable, and each product of each Borrower, if any, is listed with the FDA under the applicable FDA registration and listing regulations for medical devices;

(z) since December 31, 2012, Parent has filed or furnished when due (including any applicable extensions) all reports, schedules, forms, statements and other documents required to be filed or furnished by it with the SEC pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed or furnished prior to the date hereof and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC Documents"). Except to the extent that any SEC Document has been revised or superseded by a later-filed or furnished SEC Document, as of their respective dates: (i) the SEC Documents complied in all material respects with the requirements of the Exchange Act; (ii) none of the SEC Documents, when filed or furnished, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (iii) the financial statements of Parent included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. The financial statements of Parent included in the SEC Documents have been prepared in accordance with U.S. generally accepted accounting principles, consistently applied, during the periods involved (except (x) as may be otherwise indicated in such financial statements or the notes thereto, or (y) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of Parent as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate);

(aa) no statement or information contained in this Agreement and any other Transaction Document, any delivery of financial information or Budget or any certificate furnished to the DIP Agent or the Lenders or any of them, by or on behalf of any Borrower for use in connection with the transactions contemplated by this Agreement or the other Transaction Documents when taken as a whole, contained as of the date such statement, information, or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances in which they were made. The financial information and Budget are based upon good faith estimates and assumptions believed by management of Parent to be reasonable at the time made, such assumptions set forth on Exhibit F hereto; and

(bb) subject only to the entry of the order approving the Stalking Horse Motion, the Acquisition Agreement constitutes a valid, legal and binding obligation of the Borrowers enforceable in accordance with its terms.

**Section 3.2 Borrowers' Acknowledgment.** Each Borrower acknowledges that it has made the representations and warranties referred to in Section 3.1 with the intention of persuading the Lenders to enter into the Transaction Documents and fund each of the Loans and that the Lenders have entered into the Transaction Documents and funded the Roll-Up Loans and each Multiple Draw Term Loan on the basis of, and in full reliance on, each of such representations and warranties.

#### **ARTICLE 4 CONDITIONS OF DISBURSEMENT**

**Section 4.1 Conditions to Disbursement of Roll-Up Loans.** The obligation of the Initial Lenders to make the Roll-Up Loans shall be subject to the fulfillment of the following conditions:

- (a) the Chapter 11 Cases shall have been commenced in the Bankruptcy Court, and all of the First Day Orders and all related pleadings to be entered in connection with the commencement of the Chapter 11 Cases or promptly following the Petition Date shall have been reviewed in advance by the DIP Agent and the Initial Lenders and shall be reasonably satisfactory in form and substance to the DIP Agent and the Initial Lenders;
- (b) the Bankruptcy Court shall have entered, upon motion in form and substance satisfactory to the DIP Agent and the Initial Lenders, on such prior notice as may be satisfactory to the DIP Agent and the Initial Lenders, the Interim Order no later than three (3) Business Days after the Petition Date, approving and authorizing this Agreement and the other Transaction Documents, all provisions thereof and the priorities and liens granted under Bankruptcy Code sections 364(c) and (d), as applicable, in form and substance satisfactory to the DIP Agent and the Initial Lenders and such Interim Order shall not have been reversed, modified, amended, stayed (including stay pending appeal) or vacated;
- (c) the Borrowers shall be in compliance with the terms of the Interim Order in all respects;
- (d) no trustee or examiner shall have been appointed with respect to the Borrowers or their respective properties;
- (e) the Approved Cash Management Order shall be in full force and effect, and the Approved Cash Management Arrangements shall have been implemented, each of which shall be acceptable to the DIP Agent and the Initial Lenders;
- (f) the DIP Agent shall have received a notice of borrowing executed by the chief executive officer of Parent, substantially in the form of Exhibit C hereto;
- (g) the DIP Agent and the Initial Lenders shall have received the Budget which shall be in form and substance satisfactory to the DIP Agent and the Initial Lenders;
- (h) the DIP Agent and the Initial Lenders shall have received copies of all engagement and similar letters and management agreements of the Borrowers;

(i) the DIP Agent shall have received: (i) executed counterparts of each of the Transaction Documents; (ii) customary officer's and secretary's certificates; (iii) evidence of authority, including without limitation resolutions or consents and incumbency certificates; and (iv) any material third party and governmental consents necessary in connection with the Borrowers' entry into this Agreement and the other Transaction Documents, the financing thereunder and related transactions;

(j) all representations and warranties of the Borrowers under Section 3.1 hereto shall be true and correct in all material respects; provided that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(k) the Borrowers shall have appointed a chief restructuring officer acceptable to the DIP Agent (it being agreed that FTI Consulting is acceptable to the DIP Agent) and filed a motion seeking Bankruptcy Court approval of such appointment;

(l) all corporate and judicial proceedings and all instruments and agreements in connection with the transactions contemplated hereunder among the Borrowers, the DIP Agent and the Initial Lenders contemplated by this Agreement and the Financing Orders shall be reasonably satisfactory in form and substance to the DIP Agent and the Initial Lenders, and the Initial Lenders shall have received all information and copies of all documents or papers requested by it;

(m) the Borrowers shall have agreed to the draft of Asset Purchase Agreement, which shall be subject only to changes that are acceptable to the DIP Agent and the Initial Lenders;

(n) the Borrowers shall have paid all fees, costs and expenses then payable by the Borrowers pursuant to Section 2.9 of this Agreement and the other Transaction Documents;

(o) no Default or Event of Default has occurred or would result from the Disbursement; and

(p) the Borrowers shall have satisfied such other conditions and delivered such other financial or other information as may be reasonably requested by the DIP Agent and the Initial Lenders.

**Section 4.2 Conditions to each Multiple Draw Term Loan.** The obligation of the Lenders to make any Multiple Draw Term Loan shall be subject to the fulfillment of the following conditions:

(a) the Lenders shall have received a fully executed and delivered borrowing request at least two (2) Business Days prior to the date of such requested Disbursement;

(b) the minimum borrowing request shall be Five Hundred Thousand Dollars (\$500,000);

(c) as of the date of the proposed Disbursement, the representations and warranties contained herein and in each other Transaction Document, certificate or other writing delivered to the Lenders pursuant hereto or thereto on or prior to the date of the proposed borrowing, shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the date of the proposed borrowing, to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date;

(d) as of the date of such borrowing, no event shall have occurred and be continuing or would result from the funding of such Multiple Draw Term Loan that would constitute an Event of Default or a Default;

(e) the Borrowers shall have paid all fees, costs and expenses then payable by the Borrowers pursuant to this Agreement and the other Transaction Documents;

(f) the making of such Multiple Draw Term Loan shall not contravene any law, rule or regulation applicable to the Lenders;

(g) the amount of the Multiple Draw Term Loan requested and its intended use is permitted by the Budget;

(h) not later than twenty (20) days following the Petition Date, the Final Order shall have been entered by the Bankruptcy Court, in form and substance satisfactory to the DIP Agent and the Lenders, which Final Order shall have been entered on such prior notice to such parties as may be reasonably satisfactory to the DIP Agent and the Initial Lenders, approving and authorizing on a final basis this Agreement and the Guaranty Agreement, all provisions hereof and thereof and the priorities and liens granted under Bankruptcy Code sections 364(c) and (d), as applicable;

(i) neither the Interim Order nor the Final Order, as applicable, shall have been reversed, modified, amended, stayed (including stay pending appeal) or vacated;

(j) the Borrowers shall be in compliance in all respects with the terms of the Interim Order and the Final Order, as applicable;

(k) no trustee or examiner shall have been appointed with respect to the Borrowers or their respective properties;

(l) the Approved Cash Management Order shall be in full force and effect, and the Approved Cash Management Arrangements shall be in effect and shall not have been



materially changed, in each case without the written consent of the DIP Agent and the Required Lenders;

(m) the DIP Agent shall have received the required periodic updates to the Budget and the weekly Variance Reports, each in form and substance satisfactory to the DIP Agent and the Lenders, and the Borrowers shall be in compliance with Section 5.1(vi) and (vii); and

(n) other than the Chapter 11 Cases, no action shall be pending or threatened (to the knowledge of the Borrowers) against the Borrowers.

The DIP Agent or the Lenders shall be entitled, but not obligated, to reasonably request and receive, prior to the making of any Multiple Draw Term Loans, additional conditions or information if, in the good faith judgment of the Required Lenders, such request is warranted under the circumstances.

## ARTICLE 5 AFFIRMATIVE COVENANTS AND EVENTS OF DEFAULT

**Section 5.1 Affirmative Covenants.** Unless the Required Lenders shall otherwise agree:

(a) each Borrower and its Subsidiaries shall maintain its existence and qualify and remain qualified to do its business as currently conducted, except where the failure to maintain such qualification would not reasonably be expected to have a Material Adverse Effect;

(b) each Borrower and its Subsidiaries shall comply in all material respects with all Applicable Laws, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings;

(c) each Borrower shall obtain and its Subsidiaries shall make and keep in full force and effect all material Authorizations required to conduct their businesses;

(d) the Borrowers shall promptly notify the Lenders of the occurrence of (i) any Default or Event of Default, (ii) any claims, litigation, arbitration, mediation or administrative or regulatory proceedings (individually, a "Claim") that are instituted or threatened against any Borrower or its Subsidiaries; provided that, if any Borrower or any of its Subsidiaries has outstanding any class of publicly traded securities, such notice shall be given concurrently with public disclosure of any such event, (iii) any reporting of device recalls, device failures or serious adverse events or deaths in connection with any of the products of any Borrower or any of its Subsidiaries, (iv) an event that has had, or reasonably could be expected to have, a Material Adverse Effect on the value of any Intellectual Property and (v) each event which, at the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute a default or event of default (however described) under any Transaction Document;

(e) (i) if Parent is not required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act, Parent will provide quarterly financial statements for itself and the other

Borrowers and their Subsidiaries within forty-five (45) days after the end of each quarter, and audited annual financial statements within one hundred twenty (120) days after the end of each year prepared in accordance with GAAP in the United States with a report thereon by Parent's independent certified public accountants (an "Accountant's Report"); (ii) Parent, and such other of the Borrowers that are required to file such reports, will timely file with the SEC (subject to appropriate extensions made under Rule 12b-25 under the Exchange Act) any annual reports, quarterly reports and other periodic reports required to be filed pursuant to Section 13 or 15(d) of the Exchange Act; and (iii) Parent will provide to the Lenders copies of all documents, reports, financial data and other information not available on the SEC EDGAR system or the SEDAR system and not containing any material non-public information that the Lenders may reasonably request including amendments to Organizational Documents and those of the other Borrowers promptly after their effectiveness, and cause the Lenders to be permitted to visit and inspect any of the properties of the Borrowers, and to discuss its affairs, finances with its officers during regular business hours and upon reasonable notice;

(f) not later than two (2) business days prior to the first Monday of each calendar month commencing on June 1, 2015, the Borrowers shall deliver to the DIP Agent a rolling Budget for the period commencing on the first Monday of such calendar month. Such Budgets shall set forth on a line-item basis the Borrowers' anticipated cash receipts and cash disbursements on a weekly basis which the DIP Borrowers expect to incur during each week included in such Budget. The Borrowers shall promptly deliver to the DIP Agent any supplemental information or updates applicable to any Budget. Until such time as the DIP Agent and the Lenders have found any proposed Budget to be in form and substance satisfactory to them, the Budget last approved by the DIP Agent and the Lenders shall control;

(g) not later than Thursday of each week, commencing on the first week after the initial Budget is due pursuant to clause (f) above, the Borrowers shall deliver to the DIP Agent a weekly line-by-line Variance Report, in form and substance reasonably acceptable to the DIP Agent and the Lenders for the preceding weekly period and on a cumulative basis for the period of the applicable Budget, comparing actual cash receipts and disbursements to amounts projected in the then-applicable Budget and showing on a line-by-line basis any variance to the corresponding line item of the applicable Budget together with a reasonably detailed explanation of any material variances. No Budget shall be modified without the prior written consent of the DIP Agent and the Lenders;

(h) not later than fifteen (15) days after the last day of each month, Parent shall deliver to the DIP Agent non-GAAP basis monthly financial statements including an unaudited consolidated balance sheet and unaudited consolidated statements of operations and comprehensive income, stockholders' equity and cash flows as of the end of and for such preceding monthly period and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a financial officer of Parent as presenting fairly in all material respects the financial condition as of the end of and for such monthly period and such portion of the fiscal year and results of operations and cash flows of Parent and its Subsidiaries on a consolidated basis, subject to normal year-end adjustments;

(i) not less than two (2) Business Days prior to the filing thereof, and to the extent reasonably practicable, the Borrowers shall deliver to the DIP Agent drafts of all material pleadings, motions, applications, judicial information, financial information and any other material documents to be filed by or on behalf of the Borrowers with the Bankruptcy Court or delivered to the U.S. Trustee in the Chapter 11 Cases (except in the case of any such documents filed on an expedited basis in connection with an emergency proceeding, which shall be delivered as soon as practicable and in any event prior to the filing thereof);

(j) the Borrowers will maintain general and professional liability insurance, including products/completed operations liability coverage, and such other insurance coverage in such amounts and with respect to such risks as the Lenders may reasonably request from time to time and in accordance with Section 5.10 of the Guaranty Agreement;

(k) the Borrowers shall use the proceeds of the Loans in accordance with Section 2.1 and all cash and deposit account proceeds or other cash subject to a Lien in favor of the Lenders in accordance with the Financing Orders;

(l) as soon as available, but in any event no later than ten (10) Business Days after the end of each month, Parent shall deliver to the DIP Agent a certificate of an authorized officer of Parent setting forth computations in reasonable detail satisfactory to the Lenders demonstrating compliance with the financial covenant set forth in Section 5.3;

(m) the Borrowers will deliver to the DIP Agent as soon as practicable in advance of filing with the Bankruptcy Court and the Canadian Court, the proposed Interim Order, the proposed Final Order and the proposed Canadian Orders, as applicable (each which must be in form and substance satisfactory to the DIP Agent and the Lenders), all other proposed orders and pleadings related to this Agreement (which must be in form and substance satisfactory to the DIP Agent and the Lenders), any plan of reorganization or liquidation, and/or any disclosure statement related to such plan;

(n) the Borrowers will comply with each Case Milestone on a timely basis;

(o) the Borrowers will provide any additional reporting requirements requested by the DIP Agent and the Initial Lenders, including, without limitation, with respect to litigation, contingent liabilities, and ERISA and environmental events;

(p) the Borrowers will provide periodic access by the DIP Agent, the Lenders and their advisors to information and senior personnel, senior management and other company advisors, including conference calls with such persons upon any request by the DIP Agent or any Lender;

(q) as soon as reasonably practicable but in any case no later than four (4) days after the Petition Date, the Canadian Proceedings shall have been commenced in the Canadian Court and the Canadian First Recognition Order and all related pleadings to be entered in connection with the commencement of the Canadian Proceedings shall have been reviewed in advance by the DIP Agent and the Initial Lenders and shall be reasonably satisfactory in form and substance to the DIP Agent and the Initial Lenders;

(r) as soon as reasonably practicable but in any case no later than four (4) days after the date of the Interim Order, the Canadian Court shall have entered upon application in form and substance satisfactory to the DIP Agent and the Initial Lenders, on such prior notice as may be satisfactory to the DIP Agent and the Initial Lenders, the Canadian First Recognition Order;

(s) as soon as reasonably practicable but in any case no later than four (4) days after the date of the Interim Order, the Canadian Court shall have appointed FTI Consulting as the information officer in the Canadian Proceedings; and

(t) as soon as reasonably practicable but in any case no later than four (4) days after the date of the Final Order, the Canadian Second Recognition Order shall have been entered by the Canadian Court, in form and substance satisfactory to the DIP Agent and the Lenders, which Second Recognition Order shall have been entered on such prior notice to such parties as may be reasonably satisfactory to the DIP Agent and the Initial Lenders.

The Parent shall cause each of its Subsidiaries to comply with each of the agreements set forth in Section 5.1.

**Section 5.2 Negative Covenants.** Unless the Required Lenders shall otherwise agree:

(a) no Borrower shall, nor shall Parent permit any Subsidiary to (i) liquidate or dissolve (unless, prior to such liquidation or dissolution, such Subsidiary ceases to own any operating assets or conduct business), or (ii) directly or indirectly, by operation of law or otherwise amalgamate or merge with, consolidate with, acquire all or substantially all of the assets or stock of, or otherwise combine with or acquire, any Person. The Borrowers shall not establish any Subsidiary without consent of the Required Lenders and unless such Subsidiary executes and delivers to the Lenders a guaranty of the Obligations and security agreement providing for all of its assets to be collateral for the Obligations in form and substance satisfactory to the Lenders;

(b) no Borrower shall, nor shall Parent permit any Subsidiary to (i) enter into any partnership, joint venture, syndicate, pool, profit-sharing or royalty agreement or other combination, or engage in any transaction, whereby its income or profits are, or might be, shared with another Person other than a wholly owned Subsidiary, (ii) enter into any management contract or similar arrangement whereby a substantial part of its business is managed by another Person, or (iii) distribute, or permit the distribution of, any of its assets, including its intangibles, to any shareholder of any Subsidiary or to any Affiliate, including by way of loans or advances or purchase or redemption of equity interests in a Person;

(c) no Borrower shall, nor shall Parent permit any Subsidiary to, create, incur or suffer any Lien upon any of its assets, other than Permitted Liens and Prior Liens;

(d) no Borrower shall, nor shall Parent permit any Subsidiary to, create, incur, assume, guarantee or remain liable with respect to any Indebtedness, other than Permitted Indebtedness;

(e) no Borrower shall, nor shall Parent permit any Subsidiary to, acquire any assets (other than assets acquired in the ordinary course of business consistent with past practices), directly or indirectly, in one or more related transactions;

(f) no Borrower shall, nor shall Parent permit any Subsidiary to (i) engage in any business other than the Imaging and Service Business and the Robotics Business or (ii) modify or alter its organizational documents, except as may be required by the Bankruptcy Code in connection with the Chapter 11 Cases;

(g) no Borrower shall, nor shall Parent permit any Subsidiary to, directly or indirectly, enter into any transaction with any of its Affiliates, except in the ordinary course of business and upon terms that are no less favorable than would be obtained in a comparable arm's length transaction with a Person not an Affiliate;

(h) the Borrowers shall not declare or pay any dividend or other distribution on its common shares without the prior written consent from the Required Lenders;

(i) [Reserved];

(j) [Reserved];

(k) [Reserved];

(l) no Borrower shall, nor shall Parent permit any Subsidiary to (i) establish or commence contributing to or otherwise participate in any retirement or pension arrangement that provides defined benefits; (ii) acquire an interest in any Person if such Person sponsors, administers, participates in, or has any liability in respect of, any retirement or pension arrangement that provides defined benefits; or (iii) establish a Canadian Pension Plan or Canadian Benefit Plan;

(m) no Borrower shall, nor shall Parent permit any Subsidiary to, use the proceeds of the Loans other than in accordance with Section 2.1 and the Budget. No proceeds of any Loan may be used to pay any fees or expenses in connection with investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against (i) the Existing Lenders or Lenders or (ii) in connection with challenging, invalidating, disallowing, recharacterizing, setting aside, avoiding, subordinating, in whole or in part, or taking or attempting to take any other action to render unenforceable, the liens, claims, interests and adequate protection of the Lenders or the Existing Lenders, subject to an aggregate amount not to exceed \$10,000 that may be used by the Committee, if any, for purposes of investigating (but not challenging) liens, claims, interests and adequate protection of the Existing Lenders;

(n) no Borrower shall, nor shall Parent permit any Subsidiary to, incur, create or assume, suffer to exist or permit any superpriority claim which is pari passu or senior to the claims of the Lenders against the Borrowers hereunder, except for the Carve-Out;

(o) no Borrower shall, nor shall Parent permit any Subsidiary to, dispose any of its assets (including, without limitation, any sale and leaseback transaction) other than in the ordinary course of business;



(p) no Borrower shall, nor shall Parent permit any Subsidiary to, enter into any agreement to return any of its inventory outside the ordinary course of business to any of its creditors for application against any pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims under section 546(h) of the Bankruptcy Code;

(q) no Borrower shall, nor shall Parent permit any Subsidiary to, make (i) any payments on account of any creditor's claims against any Borrower, (ii) payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, (iii) payments in respect of a reclamation program or (iv) payments under any management incentive plan or on account of claims or expenses arising under section 503(c) of the Bankruptcy Code, except in each case, in amounts and on terms and conditions that (A) are approved by order of the Bankruptcy Court and (B) are expressly permitted by the Budget or otherwise approved by the Lenders in their sole discretion and in writing; and

(r) no Borrower, nor shall it permit any of its Subsidiaries to, obtain, or seek to obtain, any stay on the exercise of the remedies of the Lenders hereunder, under any Transaction Document or Financing Order.

**Section 5.3 Financial Covenant.** The Borrowers shall, at all times, be in compliance with the Budget and shall not permit variances with respect to each line item in the Budget to exceed 20% more than the corresponding amounts set forth in the Budget; provided, however, that so long as such variances do not exceed the corresponding amounts set forth in the Budget by more than 20%, the Borrowers shall be in compliance with the Budget. The Borrowers covenant to provide the Variance Report in accordance with Section 5.1(g) above; provided, however, that for purposes of calculating the 20% variances for the purposes of this Section 5.3 financial covenant, the Borrowers shall, starting as of the date that is two (2) weeks after the Petition Date, provide a rolling four week net cash flow report.

## ARTICLE 6 EVENTS OF DEFAULT

### Section 6.1 General Acceleration Provision upon Events of Default.

(a) If any event specified in this Section 6.1 shall have occurred and be continuing beyond the applicable cure period (each, an "Event of Default"), the Required Lenders may (i) declare the principal of, and accrued and unpaid interest on, the Loans or any part of any of them (together with any other amounts accrued or payable under the Transaction Documents) to be, and the same shall thereupon become, immediately due and payable and (ii) terminate all Commitments, in each case, without any further notice and without any presentment, demand, or protest of any kind, all of which are hereby expressly waived by the Borrowers, and take any further action available at law or in equity, including, without limitation, the sale of the Loans and all other rights acquired in connection with the Loans.

(b) Each of the following shall constitute an Event of Default:

(i) Borrowers shall have failed to make payment of (A) principal when due on the Loans, or (B) interest and any other amounts due under the Loans within five (5) Business Days of their due date;

(ii) any representation or warranty made by any Borrower in any Transaction Document shall have been incorrect, false or misleading as of the date it was made;

(iii) any Borrower shall have failed to comply with the due observance or performance of Sections 5.1, 5.2 and 5.3;

(iv) any Borrower shall have failed to comply with the due observance or performance of any other covenant, condition or agreement contained in any Transaction Document (other than as described in clauses (i), (ii) and (iii) above), and such failure shall not have been cured by the Borrower within five (5) Business Days;

(v) other than with respect to the Chapter 11 Cases or the Canadian Proceedings, an involuntary petition shall be filed or an action or proceeding otherwise commenced in respect of a Borrower seeking relief under any Debtor Relief Law or seeking any reorganization, arrangement, consolidation or readjustment of the debts of any Borrower under any other bankruptcy or insolvency law and, in respect of any such action under U.S. law, any of the following events occur: (A) such Borrower consents or acquiesces to the institution of such petition or proceeding, (B) the petition commencing such proceeding is not timely controverted, (C) the petition commencing such proceeding is not dismissed within thirty (30) days of the filing date thereof, (D) an interim trustee is appointed to take possession of all or any substantial portion of the property or assets of, or to operate all or any substantial portion of the business of, such Borrower or (E) an order for relief shall have been issued or entered therein; provided that, Lenders shall have no obligation to provide any extension of credit to any Borrower during such thirty (30) day calendar period specified in (C) above;

(vi) a receiver, interim receiver, receiver-manager, assignee, liquidator, sequestrator, custodian, trustee or similar officer shall be appointed for any Borrower or for all or any part of its property or a warrant of attachment, execution or similar process shall be issued against any part of the property of any Borrower;

(vii) any Borrower shall file a certificate of dissolution or shall be liquidated, dissolved or wound-up or shall commence or have commenced against it any action or proceeding for dissolution, winding-up or liquidation, or shall take any action in furtherance thereof;

(viii) one or more judgments against a Borrower or attachments against any of its property, other than in connection with the Chapter 11 Cases, remain(s) unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days from the date of entry of such judgment;

(ix) any authorization necessary for the execution, delivery or performance of any Transaction Document or for the validity or enforceability of any of the Obligations is not given or is withdrawn or ceases to remain in full force or effect, including without limitation the liens or superpriority claims granted with respect to the Transaction Documents shall not be valid, perfected and enforceable in all respects, or shall be asserted by or on behalf of any Borrower not to be valid, perfected and enforceable in all respects, or if any third party files any motion asserting that any pre-Petition Date liens arising under the Existing

Facility Agreement are not valid, perfected and enforceable in all respects and a court approves such motion;

(x) the validity of any Transaction Documents shall be contested by a Borrower, or any treaty, law, regulation, communiqué, decree, ordinance or policy of any jurisdiction shall purport to render any material provision of any Transaction Document invalid or unenforceable or shall purport to prevent or materially delay the performance or observance by a Borrower of the Obligations;

(xi) there is a failure to perform in any agreement to which a Borrower is a party with a third party or parties resulting in a right by such third party or parties to accelerate the maturity of any indebtedness for borrowed money in an aggregate amount in excess of \$50,000;

(xii) [Reserved];

(xiii) [Reserved];

(xiv) any material suspension by a Borrower of operation of any its businesses (other than in connection with the Chapter 11 Case);

(xv) the Chapter 11 Case or the Canadian Proceedings shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or a bankruptcy under Debtor Relief Laws, as applicable, or any Borrower shall file a motion or other pleading seeking the dismissal of the Canadian Proceedings or the Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise; a trustee under chapter 7 or chapter 11 of the Bankruptcy Code or under any Debtor Relief Laws, an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in the Chapter 11 Case and the order appointing such trustee or examiner shall not be reversed or vacated within thirty (30) days after the entry thereof;

(xvi) an order of the Bankruptcy Court or the Canadian Court shall be entered granting any superpriority claim (other than the Carve-Out) in any of the Chapter 11 Case or the Canadian Proceedings, as applicable, which is pari passu with or senior to the claims of the DIP Agent and the Lenders against any Borrower hereunder or any Lien or security interest that is pari passu with or senior to the Liens and security interest securing the Loans, or any Borrower takes any action seeking or supporting the grant of any such claim, Lien or security interest, in each case except as expressly permitted hereunder;

(xvii) the Bankruptcy Court or the Canadian Court shall enter an order or orders granting relief from the automatic stay under section 362 of the Bankruptcy Code or in the Canadian Proceedings, as applicable to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any Borrower which have a value in excess of \$50,000 in the aggregate or permit other actions that would have a Material Adverse Effect on the Borrowers or their estates (taken as a whole);



(xviii) an order of the Bankruptcy Court or the Canadian Court, as applicable shall be entered reversing, staying, vacating or (except as otherwise agreed to in writing by the Lenders in their sole and absolute discretion) otherwise amending, supplementing or modifying the Interim Order, the Final Order or the Canadian Orders;

(xix) any Borrower shall make any prepetition payment other than (A) as permitted by the Interim Order, the Final Order or the Canadian Orders, (B) as otherwise permitted by this Agreement, (C) as otherwise ordered by the Bankruptcy Court or the Canadian Court, as applicable and agreed in writing by the DIP Agent in its sole discretion or (D) as authorized by the Bankruptcy Court or the Canadian Court, as applicable (i) in accordance with the First Day Orders entered on, before or after the Agreement Date or other orders of the Bankruptcy Court or the Canadian Court entered with the consent of (or non-objection by) the DIP Agent, (ii) in connection with the assumption of executory contracts and unexpired leases with the consent of (or non-objection by) the DIP Agent or (iii) in respect of accrued payroll and related expenses and employee benefits as of the Petition Date;

(xx) any Borrower shall not comply with any terms of the Interim Order, the Final Order or the Canadian Orders;

(xxi) any stipulation shall be entered into by any Borrower or any order shall be entered by the Bankruptcy Court with respect to the provision of adequate protection to any Person or the use of cash collateral by any Borrower, in each case that is not satisfactory in form and substance to the DIP Agent in its sole and absolute discretion;

(xxii) failure at any time to employ a chief restructuring officer for the Borrowers acceptable to the DIP Agent and the Required Lenders;

(xxiii) entry of a Bankruptcy Court or the Canadian Court, as applicable, order authorizing the sale of all or substantially all of the assets of any Borrower (or any Borrower seeking or supporting such sale) unless (A) such order contemplates repayment in full in cash of this Agreement upon consummation of the sale or (B) such sale is consummated as part of a plan of reorganization; and

(xxiv) failure of the Borrowers to meet any of the Case Milestones.

**Section 6.2 Recovery of Amounts Due.** If any amount payable hereunder is not paid as and when due, the Borrowers hereby authorize the Lenders to proceed, to the fullest extent permitted by applicable law, without prior notice, by right of setoff, banker's lien or counterclaim, against any moneys or other assets of the Borrowers to the full extent of all amounts payable to the Lenders.

**Section 6.3 Certain Priorities.** Notwithstanding anything to the contrary herein or in any Transaction Document, upon an Event of Default, unless the Required Lenders otherwise agree in writing, all Collateral and the proceeds thereof, including all cash and proceeds in any deposit account, shall be paid first on account of the Multiple Draw Term Loans and Multiple Draw Term Loan Commitment prior to any payment on account of the Roll-Up Loans.

**ARTICLE 7  
MISCELLANEOUS**

**Section 7.1 Notices.** Any notice to be given under this Agreement shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or by electronic mail and shall be effective five (5) days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally, by courier, by facsimile or electronic mail in each case addressed to a Party. A notice to be given to the Borrowers under this Agreement shall not be effective unless and until it is given by the Required Lenders. Any notice given to the Borrowers under this Agreement by the Required Lenders shall be binding upon all of the Lenders. The addresses for such communications shall be:

If to the Borrowers:

IMRIS Inc.  
5101 Shady Oak Rd  
Minnetonka, MN 55343  
Fax: (204) 480-7071  
Attention: Director of Finance

With copy to:

DLA Piper LLP (US)  
203 N. LaSalle Street, Suite 1900  
Chicago, IL 60601  
Fax: (312) 630-5330  
Email: richard.chesley@dlapiper.com  
Attn: Richard A. Chesley

If to the Lenders:

Deerfield Management Company, L.P.  
780 Third Avenue, 37th Floor  
New York, NY 10017  
Fax: 212-599-3075  
Email: dclark@deerfield.com  
Attn: David J. Clark

With a copy to:

Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, New York 10019  
Fax: (212) 728-9290  
Email: lklingbaum@willkie.com  
Attn: Leonard Klingbaum

**Section 7.2 Waiver of Notice.** Whenever any notice is required to be given to the Lenders or any Borrower under any Transaction Document, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 7.3 Reimbursement of Legal and Other Expenses.** If any amount owing to the Lenders under any Transaction Document shall be collected through enforcement of this Agreement, any Transaction Document or restructuring of the Loans or Commitments, in the nature of a workout, settlement, negotiation, or any process of law, or shall be placed in the hands of third Persons for collection, the Borrowers shall pay (in addition to all monies then due in respect of the Loan or otherwise payable under any Transaction Document) attorneys' and other fees and expenses incurred in respect of such collection.

**Section 7.4 Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed in such State. All legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a Party or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each Party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such Party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The Parties hereby waive all rights to a trial by jury.

**Section 7.5 Successors and Assigns.** This Agreement shall bind and inure to the respective successors and assigns of the Parties, except that a Borrower may not assign or otherwise transfer all or any part of its rights under the Transaction Documents without the prior written consent of the Required Lenders. Each Lender may sell or otherwise transfer the Loans and related Commitments, provided that such Lender shall have provided notice of the transfer to Parent for recordation in the Register pursuant to Section 1.4. Upon receipt of a notice of a transfer of an interest in a Loan, Parent shall record the identity of the transferee and other relevant information in the Register and the transferee shall (to the extent of the interests transferred to such transferee) have all the rights and obligations of, and shall be deemed, a Lender hereunder.

**Section 7.6 Entire Agreement.** The Transaction Documents contain the entire understanding of the Parties with respect to the matters covered thereby and supersede any and

all other written and oral communications, negotiations, commitments and writings with respect thereto. The provisions of this Agreement may be waived, modified, supplemented or amended only by an instrument in writing signed by the authorized officer of each Party.

**Section 7.7 Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

**Section 7.8 Counterparts.** This Agreement may be executed by each Party on separate counterparts, each of which and any facsimile copies thereof shall be deemed an original, but all of which together shall constitute one and the same agreement.

**Section 7.9 Survival.**

The obligations of Parent or the other Borrowers as applicable under Section 1.4, Section 5.2(viii) and the obligations of the Borrowers and the Lenders under this Article 7 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, or the termination of the Commitments or this Agreement or any provision hereof.

**Section 7.10 Waiver.** Neither the failure of, nor any delay on the part of, any Party in exercising any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein, preclude other or further exercise thereof or the exercise of any other right, power or privilege; nor shall any waiver of any right, power, privilege or default hereunder, or under any agreement, document or instrument mentioned herein, constitute a waiver of any other right, power, privilege or default or constitute a waiver of any default of the same or of any other term or provision. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to the Lenders upon any default under this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of the Lenders in respect of any such default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Lenders in respect of any other default. All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law.

**Section 7.11 Indemnity.**

(a) The Borrowers shall, at all times, indemnify and hold harmless (the "Indemnity") each of the Lenders and each Lender's directors, partners, officers, employees, agents, counsel and advisors (each, a "Lender Indemnified Person") from any losses, claims (including the cost of defending against such claims), damages, liabilities, penalties, or other expenses (each a "Loss") which a Lender Indemnified Person may incur or to which a Lender Indemnified Person may become subject to the extent such Loss arises out of a breach of any

representation, warranty or covenant of the Borrowers in any of the Transaction Documents, or the extension of credit hereunder or the Loan or the use or intended use of the Loan. Each Lender shall, severally and not jointly, indemnify and hold harmless the Borrowers and each of its directors, partners, officers, employees, agents, counsel and advisors (each, a "Borrower Indemnified Person") from any Losses which a Borrower Indemnified Person may incur or to which a Borrower Indemnified Person may become subject to the extent such Losses arise out of a breach of any representation, warranty or covenant of such Lender in any of the Transaction Documents. In no event shall any Lender be liable under this provision (or under any other provision in this Agreement or any other Transaction Document) for any breach of any representation, warranty or covenant of any other Lender. The Indemnity shall not apply with respect to any Indemnified Person to the extent that a court or arbitral tribunal with jurisdiction over the subject matter of the Loss, such Indemnified Person and over the Lenders or the Borrowers, as applicable, determines (after such Indemnified Person that had an adequate opportunity to defend its interests), that such Loss resulted from the gross negligence or willful misconduct of such Indemnified Person, which determination results in a final, non-appealable judgment or decision of a court or tribunal of competent jurisdiction. The Indemnity is independent of and in addition to any other agreement of any Party under any Transaction Document to pay any amount to the Lenders or the Borrowers, as applicable, and any exclusion of any obligation to pay any amount under this subsection shall not affect the requirement to pay such amount under any other section hereof or under any other agreement. The indemnity obligation of each Lender pursuant to this Section 7.11 shall be several and not joint, and, notwithstanding anything herein to the contrary, the aggregate liability of any Lender under this Section 7.11 (together with any liability under any other indemnity provision in any of the other Transaction Documents) shall not exceed an amount equal to the principal amount of the Loans held by such Lender hereunder.

(b) Promptly after receipt by an Indemnified Person under this Section 7.11 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person.

(c) An Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel for the indemnifying party, the representation by such counsel of the Indemnified Person and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The indemnifying party shall pay for only one separate legal counsel for the Indemnified Persons, and such legal counsel shall be approved by the indemnifying party. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such legal action shall not relieve the indemnifying party of any liability to the Indemnified Person under this Section 7.11, except to the extent that the indemnifying party is actually prejudiced in its ability to defend such action. The indemnification required by this Section 7.11 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.



(d) Without prejudice to the survival of any other agreement of any of the Parties hereunder, the agreements and the obligations of the Parties contained in this Section 7.11 shall survive the termination of each other provision hereof and the payment of all amounts payable to the Lenders hereunder.

**Section 7.12 Interest Limitations.** The Transaction Documents are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration or otherwise, shall the amount paid or agreed to be paid to the Lenders for the Loan exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Lenders shall ever receive anything which might be deemed interest under applicable law, that would exceed the highest lawful rate, such amount that would be deemed excessive interest shall be applied to the reduction of the principal amount owing on account of the Loan, or if such deemed excessive interest exceeds the unpaid balance of principal of the Loan, such deemed excess shall be refunded to the Borrowers. All sums paid or agreed to be paid to the Lenders for the Loan shall, to the extent permitted by applicable law, be deemed to be amortized, prorated, allocated and spread throughout the full term of the Loan until payment in full so that the deemed rate of interest on account of the Loan is uniform throughout the term thereof. The terms and provisions of this Section shall control and supersede every other provision of this Agreement.

**Section 7.13 Further Assurances.** From time to time, the Borrowers shall perform any and all acts and execute and deliver to the Lenders such additional documents as may be necessary or as requested by the Lenders to carry out the purposes of any Transaction Document or any or to preserve and protect the Lenders' rights as contemplated therein.

**Section 7.14 Independent Transaction Documents.** Each Transaction Document constitutes an independent agreement between the parties thereto (the "Transaction Parties") and no Transaction Document shall be construed so as to affect the rights of the Transaction Parties to their rights and remedies under another Transaction Document.

**Section 7.15 Judgment Currency.** To the extent permitted by applicable law, the obligations of the Borrowers in respect of any amount due under this Agreement shall, notwithstanding any payment in any other currency (the "Other Currency") (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the currency in which it is due (the "Agreed Currency") that Lenders may, in accordance with normal banking procedures, purchase with the sum paid in the Other Currency (after any premium and costs of exchange) on the Business Day immediately after the day on which Lender receives the payment. If the amount in the Agreed Currency that may be so purchased for any reason falls short of the amount originally due, the Borrowers shall pay all additional amounts, in the Agreed Currency, as may be necessary to compensate for the shortfall. Any obligation of any Borrower not discharged by that payment shall, to the extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this Section 7.15, continue in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Lenders and the Borrowers have caused this Agreement to be duly executed.

**BORROWERS:**

**IMRIS INC.**

By: \_\_\_\_\_

Name: Jay D. Miller

Title: President and CEO

**IMRIS, INC.**

By: \_\_\_\_\_

Name: Jay D. Miller

Title: President and CEO

**NEUROARM SURGICAL LIMITED**

By: \_\_\_\_\_

Name: Jay D. Miller

Title: President and CEO

**DIP AGENT:**

**DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: Deerfield Mgmt., L.P., General Partner

By: J.E. Flynn Capital LLC, General Partner

By: \_\_\_\_\_

Name: David J. Clark

Title: Authorized Signatory

**LENDERS:**

**DEERFIELD PRIVATE DESIGN FUND II, L.P.**

By: Deerfield Mgmt., L.P., General Partner

By: J.E. Flynn Capital LLC, General Partner

By: \_\_\_\_\_

Name: David J. Clark



Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN INTERNATIONAL II, L.P.**

By: Deerfield Mgmt., L.P. General Partners

By: J.E. Flynn Capital LLC, General Partner

By: \_\_\_\_\_

Name: David J. Clark

Title: Authorized Signatory

**DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: Deerfield Mgmt., L.P., General Partner

By: J.E. Flynn Capital LLC, General Partner

By: \_\_\_\_\_

Name: David J. Clark

Title: Authorized Signatory

**SCHEDULE 1**  
**Budget**

(attached)

**Weekly Cash Forecast**  
**IMRIS Inc (United States and Canada)**  
**Dollar Amounts in Thousands (USD)**

Week Ending	FCST Week 1 5/29/15	FCST Week 2 6/5/15	FCST Week 3 6/12/15	FCST Week 4 6/19/15	FCST Week 5 6/26/15	FCST Week 6 7/3/15	FCST Week 7 7/10/15	FCST Week 8 7/17/15	FCST Week 9 7/24/15	FCST Week 10 7/31/15	FCST Week 11 8/7/15	FCST Week 12 8/14/15	Total
Beginning Cash Balance	\$ 104	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 697	\$ 252	\$ 470	\$ 250	\$ 250	\$ 250	\$ 1,004
Total Customer Collections	491	192	166	83	1,387	917	93	633	226	226	-	-	4,413
Operating Cash Disbursements	(144)	(216)	(360)	(618)	(147)	(163)	(160)	(183)	(152)	(496)	-	-	(2,658)
Vendor Payments	(440)	(105)	(446)	(105)	(345)	(35)	(335)	(39)	(335)	(35)	(13)	-	(2,732)
Payroll, 401k, Medical, etc	-	(200)	-	-	-	(160)	-	-	-	(160)	-	-	(520)
Rent	(43)	(112)	(43)	(43)	(43)	(112)	(43)	(43)	(43)	(43)	(43)	(21)	(629)
Other Disbursements	(627)	(632)	(848)	(766)	(534)	(470)	(538)	(265)	(529)	(734)	(55)	(21)	(6,019)
Total Operating Disbursements	449	1,195	848	833	51	-	-	-	566	1,329	55	21	5,348
Other Cash Activity	-	-	-	-	(447)	-	-	-	(483)	-	-	-	(930)
Loan Draws (Repayments)	-	-	-	-	-	-	-	-	-	(340)	-	-	(340)
Professional Fees: Restructuring	(167)	(167)	(167)	-	(457)	-	-	-	-	(481)	-	-	(500)
Retention Plan Payments	-	-	-	(150)	-	-	-	(150)	-	-	-	-	(938)
Critical Vendor Payments	-	(588)	-	-	-	-	-	-	-	-	-	-	(886)
Interest and Financing Fees	282	441	682	683	(853)	-	-	(150)	83	508	55	21	1,752
Funding to Subsidiaries	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Other Cash Activity	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 697	\$ 252	\$ 470	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250
Ending Cash Balance	\$ 449	\$ 1,644	\$ 2,493	\$ 3,325	\$ 3,376	\$ 3,376	\$ 3,376	\$ 3,376	\$ 3,943	\$ 5,272	\$ 5,327	\$ 5,348	\$ 5,348

Privileged and Confidential

DRAFT - Subject to Change

**SCHEDULE 2**

**Roll-Up Loan Commitments:**

<b>LENDER</b>	<b>SHARE OF ROLL-UP LOAN COMMITMENT</b>
Deerfield Private Design Fund II, L.P.	<input type="checkbox"/> %
Deerfield Private Design International II, L.P.	<input type="checkbox"/> %
Deerfield Special Situations Fund, L.P.	<input type="checkbox"/> %
<b>TOTAL</b>	<b>100.00%</b>

**Imaging and Service Business Loan Commitments:**

<b>LENDER</b>	<b>SHARE OF IMAGING AND SERVICE BUSINESS LOAN COMMITMENT</b>
Deerfield Private Design Fund II, L.P.	<input type="checkbox"/> %
Deerfield Private Design International II, L.P.	<input type="checkbox"/> %
Deerfield Special Situations Fund, L.P.	<input type="checkbox"/> %
<input type="checkbox"/>	<input type="checkbox"/> %
<b>TOTAL</b>	<b>100.00%</b>

**Robotics Business Loan Commitments:**

<b>LENDER</b>	<b>SHARE OF ROBOTICS BUSINESS LOAN COMMITMENT</b>
Deerfield Private Design Fund II, L.P.	<input type="checkbox"/> %
Deerfield Private Design International II, L.P.	<input type="checkbox"/> %
Deerfield Special Situations Fund, L.P.	<input type="checkbox"/> %
<input type="checkbox"/>	<input type="checkbox"/> %
<b>TOTAL</b>	<b>100.00%</b>

**Exhibit A**  
**Permitted Indebtedness**

**Exhibit B**  
**Permitted Liens**

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Original Court Copy

Exhibit C

FORM OF NOTICE OF BORROWING

\_\_\_\_\_, 20\_\_

Deerfield Management Company, L.P.  
780 Third Avenue, 37th Floor  
New York, NY 10017  
Attn: David J. Clark

Mr. Clark:

This Notice of Borrowing is executed and delivered by IMRIS Inc., a Canadian company ("Parent") on behalf of the applicable Borrower or Borrowers (as defined below) and pursuant to Section [2.2(b)][2.2(c)][2.2(d)] of that certain Senior Secured, Superpriority Debtor-In-Possession Credit Agreement dated as of [\_\_\_\_], 2015 (the "Agreement"), entered into by Parent, IMRIS, Inc., a Delaware corporation ("IMRIS US"), NeuroArm Surgical Limited, a Canadian company ("NeuroArm"), together with Parent and IMRIS US, collectively, the "Borrowers"), Deerfield Special Situations Fund, L.P. as administrative agent and collateral agent and the Lenders from time to time party thereto. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Agreement.

[Parent][IMRIS US][NeuroArm] hereby requests, as of [\_\_\_\_\_] (the "Disbursement Date"), that the Lenders make a [Roll-Up][Imaging and Service Business][Robotics Business] Loan in the amount of [\_\_\_\_\_] Dollars and [\_\_\_\_\_] cents (\$[\_\_\_\_\_] ) to [Parent][IMRIS US][NeuroArm]. In connection with the [Roll-Up][Imaging and Service Business][Robotics Business] Loan requested herein, Parent hereby represents, warrants, and certifies to the Lenders for the benefit of the Lenders that:

(a) as of the Disbursement Date requested herein, each representation and warranty made by the Borrowers in Section 3.1 of the Agreement is true and correct in all material respects;

(b) as of the Disbursement Date requested herein, no Default or Event of Default exists; and

(c) [as of the Disbursement Date requested herein with respect to the Roll-Up Loan, each of the conditions set forth in Section 4.1 of the Agreement have been satisfied.][as of the Disbursement Date requested herein with respect to the [Imaging and Service Business][Robotics Business] Loan, each of the conditions set forth in Section 4.2 of the Agreement have been satisfied.]

*[Signature page follows]*



This Notice of Borrowing is executed on \_\_\_\_\_, 20\_\_\_. Parent hereby certifies each and every matter contained herein to be true and correct.

**IMRIS INC.**

By: \_\_\_\_\_

Name:

Title: Chief Executive Officer

14397212.6

**Exhibit D**  
**Financial Statements**

(attached)

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Original Court Copy

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**Exhibit E**  
**Parent and Subsidiaries/Affiliates**

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Original Court Copy

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**Exhibit F**  
**Financial Information and Budget Assumptions**

(attached)

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Original Court Copy

# Schedule "L"

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

## **Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases**

*As Adopted and Promulgated in Transnational Insolvency:  
Principles of Cooperation Among the NAFTA Countries*

BY

THE AMERICAN LAW INSTITUTE  
At Washington, D.C., May 16, 2000

*And as Adopted by*

THE INTERNATIONAL INSOLVENCY INSTITUTE  
At New York, June 10, 2001



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The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at <http://www.iiiglobal.org/international/guidelines.html>.

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Toronto, Ontario M5H 3C2  
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E-mail: [info@iiiglobal.org](mailto:info@iiiglobal.org)  
Website: <http://www.iiiglobal.org>

# Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website ([www.ali.org](http://www.ali.org)).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders



of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the *Guidelines* in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN

*Director*

*The American Law Institute*

January 2004

# Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: [info@iiiglobal.org](mailto:info@iiiglobal.org)) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at [www.iiiglobal.org](http://www.iiiglobal.org).

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD

*Chairman*

*The International Insolvency Institute*

Toronto, Ontario

March 2004

# Judicial Preface

We believe that the advantages of cooperation and coordination between courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings, which became effective for the Member States of the European Union in 2002.

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed in The American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States, and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute, whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the courts. The *Guidelines* are intended to encourage and facilitate cooperation in international cases while observing all applicable rules and procedures of the courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of cooperation possible between the courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with noninsolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

David Baragwanath  
Justice  
High Court of New Zealand  
Auckland

Donald I. Brenner  
Chief Justice  
Supreme Court of British  
Columbia  
Vancouver

Sidney B. Brooks  
Judge  
United States Bankruptcy Court  
District of Colorado  
Denver

Charles G. Case, II  
Judge  
United States Bankruptcy Court  
District of Arizona  
Phoenix

Miodrag Dordević  
Justice  
Supreme Court of Slovenia  
Ljubljana

J.M. Farley  
Justice  
Ontario Superior Court of Justice  
Toronto

James L. Garrity, Jr.  
Former Judge  
United States Bankruptcy Court  
Southern District of New York  
New York

Allan L. Gropper  
Judge  
United States Bankruptcy Court  
Southern District of New York  
New York

**Paul R. Heath**  
Justice  
High Court of New Zealand  
Auckland

**Burton R. Lifland**  
Judge  
United States Bankruptcy Court  
Southern District of New York  
New York

**George C. Paine II**  
Chief Judge  
United States Bankruptcy Court  
Middle District of Tennessee  
Nashville

**Adolfo A.N. Rouillon**  
Justice  
Court of Appeal  
Rosario, Argentina

**Wisit Wisitsora–At**  
Former Justice  
Civil and Commercial Court  
Bangkok, Thailand

**Hyungdu Kim**  
Judge  
Seoul High Court  
Seoul, Korea

**Gavin Lightman**  
Justice  
Royal Courts of Justice  
London

**Chiyong Rim**  
Judge  
District Court  
Western District of Seoul  
Seoul, Korea

**Shinjiro Takagi**  
Former Justice  
Supreme Court of Japan  
Tokyo

**R.H. Zulman**  
Justice  
Supreme Court of Appeal  
of South Africa  
Parklands

April 2004



# **Guidelines**

## **Applicable to Court-to-Court Communications in Cross-Border Cases**

### ***Introduction:***

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

### **Guideline 1**

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

### **Guideline 2**

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

### **Guideline 3**

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

### **Guideline 4**

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

alized Representative of the foreign Court on such terms as the Court considers appropriate.

#### **Guideline 5**

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

#### **Guideline 6**

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

### **Guideline 7**

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

### **Guideline 8**

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

#### **Guideline 9**

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

### **Guideline 10**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.



### **Guideline 11**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

### **Guideline 12**

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction (“Non-Resident Parties”). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

### **Guideline 13**

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

#### **Guideline 14**

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

#### **Guideline 15**

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

#### **Guideline 16**

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

†  
†  
may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

#### **Guideline 17**

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.