

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
**(COMMERCIAL LIST)**

THE HONOURABLE ) MONDAY, THE 8<sup>TH</sup>  
 )  
JUSTICE OSBORNE ) DAY OF AUGUST, 2022

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,**  
**R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL**  
**OF iS5 COMMUNICATIONS INC., OF THE CITY OF MISSISSAUGA IN THE**  
**PROVINCE OF ONTARIO**

**ORDER**  
**(Re: DIP Term Sheet and Priority Charges)**

THIS MOTION, made by iS5 Communications Inc. (the “**Debtor**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) was heard this day by video conference at 330 University Avenue, Toronto, Ontario.

ON READING the notice of motion, the affidavit of Clive Dias sworn August 5, 2022 (the “**Dias Affidavit**”) and the Exhibits thereto, and the first report of Grant Thornton Limited, in its capacity as proposal trustee (the “**Proposal Trustee**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Debtor, counsel for the proposed DIP Lender (as defined below), counsel for Silicon Valley Bank (“**SVB**”), and such other counsel who were present as listed on the Counsel Slip, no one else appearing for any other person on the service list, although duly served as it appears from the affidavit of service of Mitch Stephenson sworn August 5, 2022,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and service is validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **OPERATIONS**

2. THIS COURT ORDERS that the Debtor shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any employees, consultants, agents, experts, accountants, counsel and such other persons retained or employed by the Debtor in respect of these proceedings, at their standard rates and charges existing as of the date of this Order; and
- (c) amounts owing to vendors determined by the Debtor to be necessary in order to ensure an uninterrupted supply of goods and/or services to the Debtor that are material to the continued operation of the Debtor's business; provided that such payments shall (i) be consistent with the cash flow forecast attached as Exhibit "N" to the Dias Affidavit, (ii) not exceed an aggregate amount of USD\$120,000, and (iii) be approved in advance by the Proposal Trustee or by further Order of the Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

3. THIS COURT ORDERS that the Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtor after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

4. THIS COURT ORDERS that the directors and officers of the Debtor shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), which charge shall not exceed an aggregate amount of CDN\$200,000, as security for the indemnity provided in paragraph 3 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 16 and 18 herein.

5. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Debtor’s directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 3 of this Order.

#### **ADMINISTRATION CHARGE**

6. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtor as part of the costs of these proceedings. The Debtor is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Debtor on a bi-weekly basis and, in addition, the Debtor is hereby authorized, *nunc pro tunc*, to pay to the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtor, retainers in the amounts of CDN\$15,000, CDN\$20,000, and CDN\$75,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

7. THIS COURT ORDERS that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

8. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee, if any, and the Debtor’s counsel shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount

of CDN\$150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 16 and 18 hereof.

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee 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. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee under the BIA or any applicable legislation.

#### **DIP FINANCING**

10. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to obtain and borrow under a credit facility in the maximum aggregate principal amount of USD \$1,100,000 (the “**DIP Facility**”) from Phoenix Contact Venture Funds I GmbH (in such capacity, the “**DIP Lender**”) in order to finance the Debtor’s working capital requirements and other general corporate purposes and capital expenditures; provided that unless permitted by further Order of this Court, advances under the DIP Facility shall not exceed the principal amount of USD \$600,000 (excluding interest, the commitment fee, and reasonable fees and expenses payable under the DIP Term Sheet).

11. **THIS COURT ORDERS** the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Debtor and the DIP Lender dated as of August 5, 2022, attached as Exhibit “O” to the Dias Affidavit (the “**DIP Term Sheet**”), subject to such minor amendments as may be acceptable to the Debtor and the DIP Lender, and supported by the Proposal Trustee and SVB.

12. **THIS COURT ORDERS AND DIRECTS** that the Debtor is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtor is hereby authorized and directed to

pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

13. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property as security for the Debtor’s obligations to the DIP Lender under the DIP Term Sheet, which DIP Lender’s Charge shall not exceed the amount of USD \$622,000 (plus interest and the reasonable fees and expenses payable under the DIP Term Sheet). The DIP Lender’s Charge shall not secure any obligation that exists before this Order is made, unless permitted by further Order of this Court. The DIP Lender’s Charge shall have the priority set out in paragraphs 16 and 18 hereof.

14. THIS COURT ORDERS that, notwithstanding any other provision of this Order or the BIA (including sections 69 and 69.1):

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet or the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon notice to the Debtor, may exercise any and all of its rights and remedies against the Debtor or the Property under or pursuant to the DIP Term Sheet, the Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the Debtor against the obligations of the Debtor to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtor and for the appointment of a trustee in bankruptcy of the Debtor; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor or the Property.

15. THIS COURT ORDERS AND DECLARES that, unless otherwise agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any proposal filed by the Debtor under the BIA with respect to any advances made under the DIP Term Sheet or the Definitive Documents.

16. THIS COURT ORDERS that: (a) pending expiry of the time for filing a notice of appeal or application for leave to appeal, or an appeal in respect of this Order and the disposition of any claims, actions, proceedings, applications, or motions to review, rescind or vary this Order, or applications for leave to appeal or appeals from this Order (collectively, “**Challenges**”), the Debtor is authorized to borrow funds under the DIP facility in accordance with the DIP Term Sheet; and (b) irrespective of the disposition of any Challenges, the DIP Lender shall have the benefit of the DIP Charge and all other provisions of this Order in respect of all amounts so advanced; and (c) this Order is subject to provisional execution to the extent necessary to give effect to the foregoing.

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

17. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors’ Charge and the DIP Lender’s Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of CDN \$150,000);

Second – Directors’ Charge (to the maximum amount of CDN \$200,000); and

Third – DIP Lender’s Charge (to the maximum amount of USD \$622,000 plus interest and reasonable costs and expenses payable under the DIP Term Sheet).

18. THIS COURT ORDERS that the filing, registration or perfection of 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.

19. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property 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 individual, firm, corporation, governmental body or agency or any other entities (all of the foregoing, collectively being “**Persons**”, and individually, a “**Person**”), except any validly perfected security interest in favour of equipment lessors.

20. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtor also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

21. THIS COURT ORDERS that the Charges, the DIP Term Sheet, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing or deemed filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) 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 the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the 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 Debtor entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Debtor pursuant to this Order, the DIP Term Sheet or the Definitive Documents, 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.

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

### **SERVICE AND NOTICE**

23. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '[www.grantthornton.ca/is5](http://www.grantthornton.ca/is5)'.

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtor and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

25. THIS COURT ORDERS that the Debtor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Debtor, the Business or the Property.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

28. THIS COURT ORDERS that each of the Debtor and the Proposal Trustee 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, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. THIS COURT ORDERS that any interested party (including the Debtor and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.

30. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

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IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF iS5 COMMUNICATIONS INC., OF THE CITY OF MISSISSAUGA IN THE PROVINCE OF ONTARIO

Estate No. 32-2853708  
Court File No. 32-2853708

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**Proceeding commenced at  
Toronto**

**ORDER  
(Re: DIP Term Sheet and Priority Charges)**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto ON M5H 2T6

**Dylan Chochla (LSO: 621371)**

dchochla@fasken.com  
Tel: 416 868 3425

Lawyers for the Moving Party, iS5 Communications Inc.