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

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

**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**

# MOTION RECORD

August 26, 2022

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Lawyers for the Moving Party, iS5 Communications Inc.

**TO: THE SERVICE LIST**

Estate No. 32-2853708
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***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
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# SERVICE LIST
**(As of August 26, 2022)**

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

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,**
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***ONTARIO***
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# NOTICE OF MOTION

**iS5 COMMUNICATIONS INC.** (the "**Company**") will make a motion to the Ontario Superior Court of Justice (Commercial List) on September 2, 2022 at 9:30 a.m. (Toronto time), or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference.

**THE MOTION IS FOR:**

(a) an order pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") for:

(i) abridging the time for service of the Notice of Motion and the Motion Record and dispensing with service on any other person other than those served;

(ii) extending the time period for the Company to file a proposal with the Official Receiver under the BIA (the "**Proposal Period**"), and the associated stay of proceedings in favour of the Company, to and including October 17, 2022 (the "**Stay Extension**");

(iii) approving an interim distribution to the Company's senior secured creditor, Silicon Valley Bank ("**SVB**") in the amount of USD $209,666.66, in partial satisfaction of its secured claim;

(iv) approving the engagement of John Gillberry ("**Mr. Gillberry**") as an independent director of the Company, and confirming that Mr. Gillberry is entitled to the benefit of the directors' and officers' indemnification and the Directors' Charge, as set out and defined in the order of the Honourable Justice Osborne made in this proceeding dated August 8, 2022 (the "**DIP Order**"); and

(v) approving the first report of Grant Thornton Limited ("**Grant Thornton**"), in its capacity as proposal trustee in the within proceeding (in such capacity, the "**Proposal Trustee**") dated August 5, 2022 and the second report of the Proposal Trustee, to be filed, and the actions, conduct and activities of the Proposal Trustee described in the First Report and the Second Report; and

(b) such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

(a) on August 5, 2022, the Company filed a notice of intention to make a proposal under the BIA (the "**NOI Proceeding**") naming Grant Thornton as Proposal Trustee of the Company;

(b) on August 8, 2022, the Court issued the DIP Order, which order approves, among other things:

(i) a debtor-in-possession financing term sheet dated August 5, 2022 (the "**DIP Term Sheet**") between the Company and Phoenix Contact GmbH & Co. KG (in such capacity, the "**DIP Lender**"), pursuant to which the DIP Lender agreed to advance up to a maximum amount of USD $1,100,000 to the Company in two tranches of USD $600,000 and USD $500,000 (the "**DIP Loan**"), which advances are secured by a Court-ordered priority charge over all of the assets, rights, undertakings and properties of the Company as security for amounts advanced under the DIP Term Sheet;

(ii) a first-ranking charge on all of the Company's property, in priority to all other charges in the maximum amount of CDN $150,000 to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company incurred in connection with services rendered to the Company both before and after the commencement of the NOI Proceeding; and

(iii) an indemnity from the Company in favour of the Company's directors and officers for obligations and liabilities that they may incur in their capacity as directors or officers of the Company after commencement of the NOI Proceeding, and a charge on the assets of the Company in the maximum amount of CDN $200,000 (the "**D&O Charge**"), as security for the aforesaid indemnity;

(c) the first tranche of the DIP loan in the amount of USD $600,000 was advanced to the Company under the DIP Term Sheet on August 9, 2022;

(d) the purpose of the NOI Proceeding is to provide the Company an opportunity to identify either a purchaser for its assets or an investor in the Company's business through a proposed stalking horse sale process;

**Progress Towards Binding Stalking Horse Purchase Agreement**

(e) the Company has been in negotiations with Phoenix Contact Venture Funds I GmbH ("**Phoenix**") with respect to the terms of a stalking horse purchase agreement, to act as the minimum bid in a stalking horse sale process;

(f) Phoenix is one of the Company's existing second-lien noteholders and an affiliate of the DIP Lender;

(g) prior to the commencement of the NOI Proceeding, the Company and Phoenix entered into a non-binding letter of intent, which sets out the terms upon which the parties are prepared to negotiate a binding stalking horse purchase agreement. The proposed purchase price in the letter of intent is in the range of USD $5 million to USD $7 million;

(h) negotiations between Phoenix and the Company with respect to the stalking horse purchase agreement are ongoing;

(i) the Company and Phoenix have made significant progress toward completing due diligence and negotiating a binding stalking horse purchase agreement, but it does not appear that the parties will be able to finalize the terms thereof prior to the expiry of the initial 30-day Proposal Period;

(j) the execution of the stalking horse purchase agreement and the commencement of the stalking horse sale process represent the best available option in the circumstances to maximize the Company's value for its stakeholders;

(k) the Stay Extension to October 17, 2022 will provide the Company with the time it requires to finalize the stalking horse purchase agreement and sale process;

(l) the Company expects that it will return to Court prior to the expiry of the Stay Extension to seek approval of the stalking horse purchase agreement and sale process;

**Receipt of SRED Tax Credit & Interim Distribution to SVB**

(m) on August 11, 2022, the Company received a SRED tax credit refund from the Government of Canada in the amount of CDN $1,249,942 (the "**SRED Tax Credit**");

(n) now that the Company has received the SRED Tax Credit, it appears that the Company:

(i) will not require the second CDN $500,000 advance under the DIP Term Sheet;

(ii) has enough cash to fund its operations through the expected duration of the NOI Proceeding; and

(iii) has sufficient liquidity to make an interim distribution to SVB, its senior secured creditor, in the amount of CDN $209,666.66 (the "**Interim Distribution**");

(o) the Proposal Trustee is supportive of, and the DIP Lender has consented to, the payment of the Interim Distribution;

(p) the Proposal Trustee is in the process of obtaining a legal opinion with respect to the validity and enforceability of SVB's security, which is registered under the *Personal Property Security Act*, R.S.O. 1990, c P.10;

(q) the Company is current on all HST remittances, does not maintain a pension for its employees and is current on deductions from employee wages at source—only *de minimis* amounts could rank in priority to SVB's security, and the Company has sufficient liquidity to pay these amounts as they accrue;

**Engagement of Independent Director**

(r) since June 2022, two members of the Company's board of directors have resigned;

(s) only Clive Dias, James Huff and Marcus Boker remain as directors of the Company;

(t) at the commencement of the NOI Proceeding, the Company was in discussions with Mr. Gillberry with respect to the possibility of him joining the board of directors as an independent director;

(u) the Company and Mr. Gillberry have now agreed to the terms of his engagement and Mr. Gillberry has joined the board;

(v) Mr. Gillberry has extensive board experience, including with companies experiencing liquidity issues;

(w) Mr. Gillberry is a valuable addition to the Company's board of directors, will be able to assist the Company in navigating the NOI Proceeding, and will assist the Company in negotiating the stalking horse purchase agreement;

(x) Phoenix is supportive of Mr. Gillberry joining the Company's board of directors;

(y) as a member of the Company's board of directors, Mr. Gillberry will have the benefit of the indemnity from the Company and the corresponding D&O Charge that was granted in the DIP Order;

**The Company's Cash Flow Forecasts**

(z) the Proposal Trustee has worked with the Company to prepare an updated cash flow statement to reflect, among other things, receipt of the SRED tax credit and payment of the Interim Distribution to SVB (the "**Updated Cash Flow**

**Statement**"), which illustrates the cash needs of the Company for the period ending November 4, 2022;

(aa) as reflected in the Updated Cash Flow Statement, the Company does not appear to require the second advance under the DIP Term Sheet and will have sufficient liquidity to funds its ongoing operations through the requested Stay Extension;

**The Stay Extension**

(bb) the Company is seeking the Stay Extension to October 17, 2022 to permit it to advance the negotiation of the stalking horse purchase agreement and to pursue the sale process;

(cc) the Stay Extension sought represents a 44-day extension to the initial 30 day Proposal Period;

(dd) the Company has acted, and continues to act, in good faith and with due diligence in taking steps to facilitate either an acceptable sale or restructuring of its business;

(ee) the Company is not aware of any creditors that would be prejudiced by the requested Stay Extension;

(ff) the Updated Cash Flow Statement indicates that the Company will have sufficient liquidity to continue to fund its operations through the requested Stay Extension;

(gg) the Proposal Trustee and the DIP Lender are supportive of the Stay Extension;

**Other Grounds**

(hh) those further grounds as set out in the affidavits of Clive Dias sworn August 5, 2022 and August 26, 2022 and the exhibits thereto (together, the "**Dias Affidavits**");

(ii) the provisions of the BIA;

(jj) rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and

(kk) such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the Dias Affidavits;

(b) the First Report;

(c) the Second Report; and

(d) such further and other material as counsel may advise and this Honourable Court may permit.

August 26, 2022

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TO: **THE SERVICE LIST**

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

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

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

**Proceeding commenced at**
**Toronto**

**NOTICE OF MOTION**
**(RETURNABLE SEPTEMBER 2, 2022)**

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | FRIDAY, THE 2ND |
| | ) | |
| JUSTICE OSBORNE | ) | DAY OF SEPTEMBER, 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
**(Extension of Proposal Period)**

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 26, 2022 (the "**Dias Affidavit**") and the Exhibits thereto, the first report of Grant Thornton Limited, in its capacity as proposal trustee (the "**Proposal Trustee**"), dated August 5, 2022 (the "**First Report**") and the second report of the Proposal Trustee, dated August 26, 2022 (the "**Second Report**"), and on hearing the submissions of counsel for the Debtor, counsel for the Proposal Trustee, counsel for Silicon Valley Bank, counsel for Phoenix Contact Venture Funds I GmbH, 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 affidavits of service of Carolyn Flanagan and Danny David sworn August 26, 2022, filed.

**SERVICE**

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

**EXTENSION OF THE PROPOSAL PERIOD**

2. THIS COURT ORDERS that, pursuant to subsection 50.4(9) of the BIA, the time for filing a proposal with the Official Receiver in the proceedings of the Debtor, including the stay of proceedings, is extended to and including October 17, 2022.

**INTERIM DISTRIBUTION**

3. THIS COURT ORDERS AND DIRECTS that the Debtor be and is hereby authorized and directed to distribute to Silicon Valley Bank USD $209,666.66 in partial satisfaction of its secured claim.

**APPOINTMENT OF INDEPENDENT DIRECTOR**

4. THIS COURT ORDERS that the Debtor is hereby authorized and directed to retain John Gillberry as an independent director of the Debtor.

5. THIS COURT ORDERS that John Gillberry shall be entitled to the benefit of the indemnity provided by the Debtor to the directors and officers of the Debtor and the Directors' Charge, as set out and defined at paragraphs 3 and 4 in the order of the Honourable Justice Osborne made in this proceeding dated August 8, 2022.

**REPORT AND ACTIVITIES OF THE PROPOSAL TRUSTEE**

6. THIS COURT ORDERS that the First Report, the Second Report, and the actions, conduct and activities of the Proposal Trustee described therein, be and are hereby approved, provided, however, that only the Proposal Trustee, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**GENERAL**

7. 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.

8. 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.

9. 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.

10. 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.

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

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

**Proceeding commenced at**
**Toronto**

**ORDER**
**(Extension of Proposal Period)**

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

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**AFFIDAVIT OF CLIVE DIAS**
**(SWORN AUGUST 26, 2022)**

I, Clive Dias, President, Chief Executive Officer and a Director of iS5 Communications Inc. ("**iS5**" or the "**Company**"), of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the President, Chief Executive Officer and a Director of the Board of Directors of iS5 and as such, I have knowledge of the matters set out herein. Where information has been received from others, I have stated the source of the information and believe it to be true.

**I. PURPOSE**

2. I am swearing this affidavit in support of a Motion by the Company for an order pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"),

(a) abridging the time for service of the Notice of Motion and the Motion Record and dispensing with service on any other person other than those served;

(b) extending the time period for the Company to file a proposal with the Official Receiver under the BIA (the "**Proposal Period**"), and the associated stay of proceedings in favour of the Company, to and including October 17, 2022 (the "**Stay Extension**");

(c) approving an interim distribution to the Company's senior secured creditor, Silicon Valley Bank ("**SVB**") in the amount of USD $209,666.66, in partial satisfaction of its secured claim;

(d) approving the engagement of John Gillberry ("**Mr. Gillberry**") as an independent director of the Company, and confirming that Mr. Gillberry is entitled to the benefit of the directors' and officers indemnification and the Directors' Charge, as set out and defined in the order of the Honourable Justice Osborne made in this proceeding dated August 8, 2022 (the "**DIP Order**"); and

(e) approving the first report of Grant Thornton Limited ("**Grant Thornton**"), in its capacity as proposal trustee in the within proceeding (in such capacity, the "**Proposal Trustee**") dated August 5, 2022 (the "**First Report**"), and the second report of the Proposal Trustee, to be filed (the "**Second Report**"), and the actions, conduct and activities of the Proposal Trustee described therein.

**II. BACKGROUND**

3. The Company filed a notice of intention to make a proposal under the BIA on August 5, 2022 (the "**NOI Proceeding**"). Attached hereto and marked as **Exhibit "A"** is a copy of the certificate of filing issued by the Superintendent of Bankruptcy.

4. Grant Thornton was named as Proposal Trustee of the Company in the NOI Proceeding.

5. On August 10, 2022, the Proposal Trustee sent out a notice to creditors in the form prescribed under the BIA. Attached hereto and marked as **Exhibit "B"** is a copy of the form of letter that was sent to creditors.

6. As per the direction of the Honourable Justice Osborne in his endorsement made in connection with the DIP Order, the Proposal Trustee also sent a letter to the Company's shareholders informing them of the NOI Proceeding and enclosing a copy of the DIP Order and the endorsement. Attached hereto and marked as **Exhibit "C"** is a copy of the form of letter that was sent to the Company's shareholders.

7. The Company will also send a courtesy copy of this Motion Record to the shareholders to ensure that they are kept apprised of developments in this NOI Proceeding.

8. The purpose of the NOI Proceeding is to provide the Company an opportunity to either identify a purchaser for its assets or an investor in the Company's business through a

proposed stalking horse sale process. The proposed stalking horse purchaser is an affiliate of one of the Company's existing second-lien noteholders, Phoenix Contact Venture Funds I GmbH ("**Phoenix**"). Negotiations with respect to a binding stalking horse purchase agreement with Phoenix are ongoing.

9. On August 8, 2022, the Court issued the DIP Order approving, among other things:

(a) a debtor-in-possession financing term sheet dated August 5, 2022 (the "**DIP Term Sheet**") between the Company and Phoenix Contact GmbH & Co. KG (in such capacity, the "**DIP Lender**"), an affiliate of the proposed stalking horse purchaser, pursuant to which the DIP Lender agreed to advance up to a maximum amount of USD $1,100,000 to the Company in two tranches of USD $600,000 and USD $500,000, which advances are secured by a Court-ordered priority charge over all of the assets, rights, undertakings and properties of the Company as security for amounts advanced under the DIP loan;

(b) a first-ranking charge on all of the Company's property, in priority to all other charges in the maximum amount of CDN $150,000 to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company incurred in connection with services rendered to the Company both before and after the commencement of the NOI Proceeding; and

(c) an indemnity from the Company in favour of the Company's directors and officers for obligations and liabilities that they may incur in their capacity as directors or officers of the Company after commencement of the NOI Proceeding, and a charge on the assets of the Company in the maximum amount of CDN $200,000 (the "**D&O Charge**"), as security for the aforesaid indemnity.

10. The DIP Term Sheet contemplates that the interim financing will be advanced in two tranches. The first tranche of USD $600,000 was advanced on August 9, 2022. The second tranche of USD $500,000 can only be advanced subject to a further order of the Court.

11. On August 11, 2022, the Company received a tax refund in connection with a Scientific Research and Experimental Development ("**SRED**") credit from the Government of Canada in the amount of CDN $1,249,942. As a result of the receipt of the SRED tax credit, it does not appear that the Company will require the second advance under the DIP Term Sheet.

12. As discussed in greater detail in my affidavit sworn on August 5, 2022 (the "**First Dias Affidavit**"), the purpose of the DIP financing is to provide the Company with the funds it needs to complete the negotiation of a binding stalking horse purchase agreement with Phoenix, and once the stalking horse purchase agreement is executed, to commence a stalking horse sale process.

13. Prior to the commencement of the NOI Proceeding, the Company and Phoenix entered into a non-binding letter of intent dated August 3, 2022 (the "**LOI**") which sets out the terms upon which the parties are prepared to negotiate a binding stalking horse purchase agreement to act as the minimum bid in a proposed stalking horse sale process. The proposed purchase price, subject to the completion of due diligence by Phoenix and entering into a binding purchase agreement, is in the range of USD $5 million to USD $7 million. Attached hereto and marked as **Exhibit "D"** is a copy of the LOI.

14. While the Company and Phoenix have made significant progress in the completion of due diligence and the negotiation of a binding stalking horse purchase agreement, it is unlikely that the parties will be able to finalize the terms of a binding stalking horse purchase agreement prior to the expiry of the initial 30 day Proposal Period.

15. The Company is therefore seeking the Stay Extension up to and including October 17, 2022 to provide it with the time it requires to finalize the proposed stalking horse purchase agreement and stalking horse sale process. The Company expects that it will return to Court prior to the expiry of the Stay Extension to seek approval of a binding stalking horse purchase agreement and sale process.

16. I provided a detailed description of the Company's business, operations, assets, liabilities, causes of insolvency and its restructuring efforts in the First Dias Affidavit. The First Dias Affidavit is available on the Proposal Trustee's website at the following link: www.grantthornton.ca/is5.

## III. PROGRESS TOWARDS A BINDING STALKING HORSE AGREEMENT

17. The Company was hopeful that it would have executed a binding stalking horse purchase agreement prior to the expiry of the initial 30-day Proposal Period. Despite diligently working towards achieving this goal, it does not appear that the Company and Phoenix will have settled the terms of the agreement prior to the expiration of the initial 30-day period.

18. The Company does expect to have a binding agreement with Phoenix in the next few weeks and intends to return to Court as soon as possible to seek approval of the stalking horse purchase agreement and a sale process.

19. Since the execution of the LOI, the Company and Phoenix have materially progressed their negotiation of a binding agreement. The Company has expended significant efforts in facilitating Phoenix's due diligence and responding to various inquiries about the Company and its business and operations. I and other representatives of the Company have met virtually with representatives of Phoenix on at least five occasions and have been in frequent communication with Phoenix's team. The Company has also uploaded approximately 550 files to an online data room, many of which were uploaded after the commencement of the NOI proceeding.

20. On August 25, 2022, the Company received a draft of the stalking horse purchase agreement and is in the process of reviewing the draft with its legal counsel. Upon settling the terms of the agreement, the Company will return to Court at the earliest opportunity to seek approval of the agreement and a stalking horse sale process.

21. The Company's board of directors remains of the view that the execution of a stalking horse purchase agreement with Phoenix, and the commencement of a stalking horse sale process, is the best available option in the circumstances to maximize value for the Company's stakeholders. The Company has been diligently pursuing this goal, and requires an extension of the Proposal Period to allow it to finalize the terms of the stalking horse purchase agreement and to pursue the sale process.

## IV. RECEIPT OF SRED TAX CREDIT & INTERIM DISTRIBUTION TO SVB

22. On August 11, 2022, the Company received a SRED tax credit refund from the Government of Canada in the amount of CDN $1,249,942.

23. As reflected in the Updated Cash Flow Statement (as defined below), now that the Company has received the SRED tax credit it does not appear that the Company will require the second advance under the DIP Term Sheet.

24. It also appears that the Company has sufficient liquidity to allow it to make an interim distribution to its senior secured creditor SVB, while maintaining enough cash to fund its operations through the expected duration of the NOI Proceeding without requiring the second advance under the DIP Term Sheet.

25. As described in greater detail in the First Dias Affidavit, the Company is indebted to SVB pursuant to the terms of a loan and security agreement dated as of May 15, 2019, as amended from time to time (the "**SVB Loan Agreement**"). As of August 6, 2022, the aggregate amount outstanding under the SVB Loan Agreement is: (i) term loan: USD $1,338,888.55, comprised of principal in the amount of USD $1,333,333.33 and accrued interest in the amount of approximately USD $5,555.55; and (ii) revolving line facility: USD $603,020.75, comprised of principal in the amount of USD $600,000 and accrued interest in the amount of USD $3,020.75. Attached hereto and marked as **Exhibit "E"** is a copy of the SVB Loan Agreement, as amended from time to time.

26. Pursuant to the SVB Loan Agreement, the Company granted a security interest in all of its present and after-acquired personal property, excluding its intellectual property (over which a negative pledge is granted) in favour of SVB to secure payment and performance of the Company's obligations to pay amounts owing from the Company to SVB under the SVB Loan Agreement, or otherwise. The SVB Loan Agreement expressly provides that the Company

granted to SVB a security interest in any tax credits, including any of its SRED tax credits from the Government of Canada.

27. SVB's security interest is registered under the PPSA and appears to be first in priority.

28. As described in the First Dias Affidavit, SVB has been supportive of the Company's restructuring efforts to date. On July 21, 2022, SVB provided short-term bridge financing to the Company in the form of two principal deferrals in the aggregate amount of USD $166,666.66 (one retroactive refund of a previous principal payment in July of USD $83,333.33, and a second deferral of a principal payment of USD $83,333.33 that was due August 2, 2022), and access to an additional USD $43,000 under the revolving line facility (together, the "**SVB Bulge**"), in order to permit the Company additional time to negotiate the terms of a binding stalking horse purchase agreement with Phoenix. These amounts are included in the total aggregate indebtedness owing to SVB described above at paragraph 25.

29. Upon receipt of the SRED tax credit, the Company worked with the Proposal Trustee and determined that it has sufficient liquidity to allow it to make a distribution to SVB. The DIP Term Sheet requires that the Company obtain the consent of the DIP Lender prior to repaying any indebtedness or other obligations upon receipt of a SRED tax credit. The Company has obtained the DIP Lender's consent to distribute USD $209,666.66, in partial satisfaction of SVB's secured claims against the Company. The distribution represents repayment to SVB of the SVB Bulge that it made available to the Company prior to the commencement of the NOI Proceeding.

30. The Proposal Trustee is supportive of the distribution to SVB, and is in the process of obtaining an opinion from its legal counsel Steve Weisz of Cozon O'Connor LLP with respect to the validity and enforceability of the SVB security. I understand that the legal opinion will be available before the hearing date of this Motion. In the event that the review of the SVB security reveals any issues with respect to the validity and enforceability of the SVB security, legal counsel to the Company will advise the Court at the hearing.

31. The Company is current on all HST remittances. The Company does not maintain a pension for its employees. The Company is current on deductions from employee wages at source. There are therefore only *de minimis* amounts that could rank in priority to SVB's security, and the Company has sufficient liquidity to pay these amounts as they accrue.

## V. ENGAGEMENT OF INDEPENDENT DIRECTOR

32. As I discussed in the First Dias Affidavit, since June 2022, two Board members have resigned from the board of directors of the Company. As of the date of swearing this affidavit, only James Huff, Marcus Boker and I remain as directors of the Company.

33. At the commencement of this NOI Proceeding, the Company was in discussions with Mr. Gillberry with respect to the possibility of him joining the board of directors as an independent director. The Company and Mr. Gillberry have now agreed to the terms of his engagement and Mr. Gillberry has joined the board.

34. Mr. Gillberry has extensive board experience, including with companies experiencing liquidity issues. For example, Mr. Gillberry joined the board of directors of Guestlogix Inc. prior to the commencement of its CCAA proceeding in February 2016 to assist

the company with its restructuring efforts. Guestlogix successfully emerged from its CCAA proceeding and continues as a going concern. Mr. Gillberry's role with Guestlogix is only one illustrative example of his extensive experience. Attached hereto and marked as **Exhibit "F"** is a copy of Mr. Gillberry's bio.

35. In my view, Mr. Gillberry is a valuable addition to the Company's board of directors who will be able to assist the Company in navigating this process.

36. It is expected that Mr. Gillberry will also assist the Company in negotiating a binding stalking horse purchase agreement with Phoenix. Phoenix has indicated that it is supportive of Mr. Gillberry joining the board of directors.

37. As a member of the Company's board of directors, Mr. Gillberry will have the benefit of the indemnity from the Company and the corresponding D&O Charge that was granted in the DIP Order.

## VI. COMPANY'S CASH-FLOW FORECASTS

38. The Company's initial cash flow statement for the period from August 8, 2022 to November 4, 2022 was attached as Exhibit "N" to the First Dias Affidavit.

39. The Company has worked with the Proposal Trustee to prepare an updated cash flow statement for the same period to reflect, among other things, receipt of the SRED tax credit and the proposed interim distribution to SVB (the "**Updated Cash Flow Statement**"). Attached hereto and marked as **Exhibit "G"** is a copy of the Updated Cash Flow Statement.

40. The Updated Cash Flow Statement demonstrates the cash needs of the Company during the forecast period. The cash outflows of the Company contemplated in the Updated Cash Flow Statement include the proposed distribution to SVB, as well as the direct costs of the Company (including restructuring costs) during the forecast period, including the payment of wages owing to employees.

41. As reflected in the Updated Cash Flow Statement, it does not appear that the Company will require the second advance under the DIP Term Sheet.

## VII. STAY EXTENSION

42. The Company is seeking an extension to October 17, 2022 of the time to file a proposal to permit it to advance the negotiation of the proposed stalking horse purchase agreement described above, and upon execution of that agreement, to pursue a sale process. This represents a 44 day extension to the initial 30 day stay provided for in the BIA.

43. The Company has acted, and continues to act, in good faith and with due diligence in taking steps to facilitate either an acceptable sale or restructuring of its business. The Company requires the additional time afforded by the proposed Stay Extension to pursue the stalking horse purchase agreement and sale process. The requested Stay Extension will allow the Company the time it requires to negotiate and execute a binding stalking horse purchase agreement with Phoenix, and return to Court for approval of the stalking horse purchase agreement and sale process at the earliest opportunity. I am not aware of any creditors who would be prejudiced by the Stay Extension.

44. The Updated Cash Flow Statement indicates that the Company will have sufficient liquidity to continue to fund its operations until the week ending November 4, 2022. The Company will therefore have sufficient liquidity to fund its operations through the requested Stay Extension.

45. I understand that both the DIP Lender and the Proposal Trustee are supportive of the Stay Extension.

46. I swear this Affidavit in support of the Company's Motion in these proceedings.

**SWORN** remotely by Clive Dias, via videoconference, at the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 26th day of August, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

Commissioner for Taking Affidavits

**CAROLYN FLANAGAN**

DocuSigned by:

Clive Dias

9D05738E963341C...

**CLIVE DIAS**

This is Exhibit "A" referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

Industry Canada / Industrie Canada
Office of the Superintendent of Bankruptcy Canada / Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Mississauga
Court No. 32-2853708
Estate No. 32-2853708

In the Matter of the Notice of Intention to make a proposal of:

**iS5 Communications Inc.**

Insolvent Person

**GRANT THORNTON LIMITED**

Licensed Insolvency Trustee

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Date of the Notice of Intention: August 05, 2022

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: August 05, 2022, 13:18

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

Canada

This is Exhibit "B" referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

**Grant Thornton Limited**
11th Floor
200 King Street West, Box 11
Toronto, ON
M5H 3T4

T +1 416 366 0100
F +1 416 360 4948

August 10, 2022

IN THE MATTER OF THE NOTICE INTENTION FILED BY
iS5 COMMUNICATIONS INC.
OF THE CITY OF MISSISSAUGA
IN THE PROVICE OF ONTARIO

To the creditors of **iS5 Communications Inc. ("iS5" or the "Company")**

We are writing to you to advise you that on August 5, 2022 the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**"). Grant Thornton Limited was named as the Licensed Insolvency Trustee under the NOI ("**Grant Thornton**" or the "**Trustee**"). It is the Trustee's understanding that the Company will continue to operate in the normal course while it seeks to complete a sale transaction for the business, and where a purchaser has been identified. The attached notice and related enclosures are required to be sent to all creditors of the Company who owed at least $250. In addition, pursuant to paragraph 11 of the Endorsement of Justice Osborne dated August 8, 2022, all stakeholders are to receive a copy of the said endorsement and order of the Court. In this regard, enclosed are the following documents:

1. Notice of Intention to Make a Proposal (Form 33);
2. List of preliminary creditors with potential claims over $250;
3. Certificate of Filing of a Notice of Intention (subsection 50.4(1)); and,
4. Consent of Grant Thornton Limited to act as Trustee.
5. Order of the Court Dated August 8, 2022
6. Endorsement of Justice Osborne dated August 8, 2022

Although the NOI proceeding is pursuant to the Act, it is important to note that iS5 is not bankrupt. The principal purpose of this proceeding is to create a stabilized environment to allow iS5 the opportunity to complete into a sale transaction.

If you have any further questions or concerns, we recommend you refer to the Trustee's case website: www.GrantThornton.ca/is5 for more information. If you are unable to find answers to your questions or have further inquiries we recommend you speak to your contact at iS5, or the Trustee's office, David Collins (David.Collins@ca.gt.com), 416-360-5131, or Jason Kanji (Jason.Kanji@ca.gt.com), 416-777-6136.

**GRANT THORNTON LIMITED**
*In its capacity as Trustee for iS5 Communications Inc.*
*and not in its personal or corporate capacity*

This is Exhibit "C" referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

Grant Thornton

**Grant Thornton Limited**
11th Floor
200 King Street West, Box 11
Toronto, ON
M5H 3T4

T +1 416 366 0100
F +1 416 360 4948

August 10, 2022

IN THE MATTER OF THE NOTICE INTENTION FILED BY
iS5 COMMUNICATIONS INC.
OF THE CITY OF MISSISSAUGA
IN THE PROVICE OF ONTARIO

To the shareholders of iS5 Communications Inc. ("**iS5**" or the "**Company**"):

We are writing to advise you that on August 5, 2022, the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**"). Grant Thornton Limited was named as the Licensed Insolvency Trustee under the NOI ("**Grant Thornton**" or the "**Trustee**"). It is the Trustee's understanding that the Company will continue to operate in the normal course while it seeks to complete a sale transaction for its business in the context of its NOI proceeding.

On August 8, 2022, the Company obtained an order (the "**Order**") from the Ontario Superior Court of Justice (Commercial List) approving: (i) a debtor-in-possession financing term sheet with Phoenix Contact Venture Funds I GmbH ("**Phoenix**") to provide the Company with interim financing in the maximum aggregate principal amount of USD $1,100,000 (the "**DIP Term Sheet**") to allow the Company to continue negotiating a binding stalking horse purchase agreement with Phoenix, and if successful, to commence a sale process to canvass the market for other parties who may be interested in acquiring the Company, and granting a priority charge over the Company's assets in favour of Phoenix as security for advances made to the Company under the DIP Term Sheet; (ii) a priority administration charge in the maximum amount of CDN $150,000 to secure the fees of the insolvency professionals working on the NOI proceeding; and (iii) a priority charge in the maximum amount of CDN $200,000 in favour of the Company's directors and officers to secure the indemnity the Company has provided to them in respect of obligations and liabilities that they may incur as directors or officers of the Company after the commencement of the NOI proceeding (with the exception of gross negligence or willful misconduct).

Please see enclosed a copy of the Order, and the corresponding Endorsement of Justice Osborne made on August 8, 2022. Pursuant to paragraph 11 of the Endorsement, Justice Osborne directed that all stakeholders be provided with a copy of the Endorsement and Order. We also enclose for your reference the Notice of Intention to Make a Proposal (Form 33), the Certificate of Filing of a Notice of Intention (subsection 50.4(1)); and, the Consent of Grant Thornton Limited to act as Trustee.

If you have any further questions or concerns, we recommend you refer to the Trustee's case website: www.GrantThornton.ca/is5 for more information. If you are unable to find answers to your questions or have further inquiries we recommend you speak to your contact at iS5, or the Trustee's office, David Collins (David.Collins@ca.gt.com), 416-360-5131, or Jason Kanji (Jason.Kanji@ca.gt.com), 416-777-6136.

**GRANT THORNTON LIMITED**
*In its capacity as Trustee for iS5 Communications Inc.*
*and not in its personal or corporate capacity*

*encl:*

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

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | MONDAY, THE 8TH |
| | ) | |
| 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'.

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.

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
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Toronto ON M5H 2T6

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Lawyers for the Moving Party, iS5 Communications Inc.

SUPERIOR COURT OF JUSTICE

# COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: 32-2853708

DATE: 08 August 2022

6

TITLE OF PROCEEDING

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF Is5 COMMUNICATIONS INC.

BEFORE MR. JUSTICE OSBORNE

NAMES OF COUNSEL AND PARTY:

■ APPLICANT(S) – **Dylan Chochla**
☐ PLAINTIFF(S)
**Maurizio Milani** (CFO-iS5)

PHONE

EMAIL dchocla@fasken.com

NAMES OF COUNSEL AND PARTY:

☐ DEFENDANT(S)
■ RESPONDENT(S) – **Kyle Plunkett** (SVB)
☐ DEFENDANT(S)
■ RESPONDENT(S) – **McKenzie** (McCharles Family Trust)

**Mitch Grossell** (Phoenix)
**Jennifer Allen** (Corp. Counsel, Phoenix)

PHONE

EMAIL kplunkett@airdberlis.com
mgrossell@tgf.ca
lawyerbill@rogers.com;

PHONE

EMAIL

NAMES OF COUNSEL AND OTHER PARTIES:

■ **Dan Wootton** (Proposal Trustee)
☐

PHONE

EMAIL Dan.wootton@ca.gt.com

PHONE

EMAIL

ENDORSEMENT OF OSBORNE, J:

[1] This is a motion by iS5 Communications Inc., [the "Debtor" or "iS5"], for approval of DIP financing on an interim basis as more particularly described below, establishing an Administration Charge in the maximum amount of CDN $150,000, certain indemnification of the directors and officers and a D&O charge, and authorization for the company to pay prefiling amounts owing to certain suppliers if necessary to ensure the ongoing operation of the company, in the maximum amount of USD $120,000.

[2] The Debtor filed an NOI under the BIA on August 5, 2022. Grant Thornton Limited was named as Proposal Trustee.

[3] The relief sought proceeds on the consent of all parties present, save for that of Mr. McKenzie, counsel for the McCharles Family Trust ["MFT"].

[4] In particular, by Silicon Valley Bank ["SVB"], the primary secured lender who is most directly affected by the relief sought, and Phoenix Contact Venture Funds I GmbH ["Phoenix"], the proposed DIP lender who is also an existing creditor and the owner of approximately 14% of the equity of the Debtor, support the relief sought.

[5] MFT owns, according to the most recent capitalization table available to the proposed DIP lender, Phoenix, approximately 3.3% of the equity of the Debtor.

[6] MFT seeks an adjournment of this motion for approximately two - three weeks on the basis that it was just served with the materials last Friday, August 5, and that counsel for MFT, Mr. McKenzie, has not been able to obtain instructions from the principal of his client who is on vacation. Mr. McKenzie to the relatively brief adjournment he is seeking.

[7] Mr. McKenzie on behalf of MFT has filed no materials, nor has he sought to cross-examine the deponent on whose affidavit the Debtor relies today, Mr. Dias, recognizing as I do that he has had only a brief opportunity to consider doing so. His submissions today, however, as to why the adjournment ought to be granted, and made in the understandable absence of evidence from MFT, relate to possible concerns with the sale process contemplated by the Debtor, with Phoenix as a potential purchaser, and other matters not relevant today.

[8] While the concerns and issues or potential issues raised by Mr. McKenzie may be real and require further negotiation between the parties or a determination to be made by this Court, none of those issues is before me today. Approval of a sales process, and hopefully approval of a sale and vesting order, are all for another day.

[9] Mr. Chochla for the Applicant, supported by Phoenix and SVB, urged that the relief sought today is time-critical and emergent, and that the company will cease operations if the relief sought today is not granted.

[10] The Debtor relies on the affidavit of Mr. Dias, the chief executive officer, and principally on his evidence to the effect that the directors and officers will likely resign and leave the company without proper [or any] governance or leadership, and the fact that the company is out of money and unable to continue operations without the first advance contemplated to be made immediately pursuant to the terms of the DIP.

[11] I am satisfied that the relief sought by the Debtor should be granted and that the issues and concerns raised by Mr. McKenzie relate to the contemplated sales process and other issues not before the Court today. I have required, however, counsel for the Applicant to amend the proposed order sought to include a comeback clause permitting any affected party to return to Court as may be necessary and appropriate. I have also directed counsel that all stakeholders be put on notice and given a copy of this endorsement and a copy of the order, as revised, that I have signed today.

[12] I am satisfied that the relief sought should be granted and that there is no practical alternative to maximize the recovery for stakeholders.

[13] iS5 provides integrated services and information technology solutions to clients. It also manufactures ethernet projects primarily for industrial and infrastructure clients. It is an Ontario Corporation with its head office in Mississauga, Ontario.

[14] Until recently, the Board of Directors was comprised of five members. Two have resigned since June, 2022 as a result of liquidity issues, such that three remain.

[15] The company has 39 employees of whom 38 are full-time, salaried employees. None are unionized.

[16] The evidence of Mr. Dias, President, Chief Executive Officer and a member of the Board of Directors, is to the effect that, prior to the commencement of the NOI Proceeding, the company was negotiating with one of its existing creditors, Phoenix [or one of its affiliates], with respect to a potential sale. It has become apparent that the company lacks sufficient or indeed any liquidity to allow it the time to complete those negotiations without bridge financing.

[17] Phoenix has offered to provide DIP financing. It is contemplated that Phoenix will act in the role as a stalking horse with a view to promoting and facilitating the proposed sales process.

[18] SVB entered into an agreement with the company as of May 15, 2019 pursuant to which it agreed to make term loan advances available to the company up to an aggregate amount of USD $3 million on terms.

[19] As of July 26, 2022, the aggregate amount outstanding and payable to SVB is approximately $2 million, comprised of a term loan and revolving credit facility.

[20] The evidence of Mr. Dias is to the effect that SVB's security interest is in first priority position.

[21] The company also has issued and outstanding secured notes in the aggregate amount of CDN $11,104,905 inclusive of principal and interest, all owing to the "Secured Noteholders" as defined in the DS affidavit.

[22] The company also has approximately CAD $4 million in unsecured debt, in addition to exposure for unpaid wages and vacation pay which are contemplated by the company to be paid from the first advance under the DIP facility if approved.

[23] The company is current on all HST remittances and other government obligations such as business taxes and payments in respect of employee wage deductions at source. In addition, the company owes the Federal Economic Development Agency approximately CDN $2,590,000 in respect of two unsecured federal development loans.

[24] The Dias affidavit states that, according to the June 30, 2022 balance sheet of the Company, it is insolvent, with assets of approximately USD $6 million and total liabilities of approximately USD $13 million. The company's cash flow, operation and liquidity challenges are set out in the Dias affidavit.

[25] The DS affidavit further states that, commencing the week of August 8, 2022, the company will not have sufficient liquidity to meet its employee wages and ongoing obligations that will accrue thereafter in the absence of interim financing and further that the directors have indicated that they are unlikely to continue in that capacity as such without access to the proposed interim financing.

[26] The interim financing sought through the first advance proposed to be made under the DIP facility is limited to the amount required to allow Phoenix and the company a brief window to finalize the negotiation of a binding stalking horse purchase agreement and is capped at the maximum amount of USD $600,000.

[27] The relief sought today, as noted above, does not include approval of that stalking horse purchase agreement, and that is for another day.

[28] It was the company's liquidity crisis that led to the filing of the NOI.

[29] The company has prepared a cash flow statement which is attached to the Dias affidavit as Exhibit "N" and is also attached to the first report of the Proposal Trustee as Appendix 2.

[30] That cash flow statement supports the statements in the Dias affidavit to the effect that in the absence of approval of the DIP financing and particularly the first advance in the amount of USD $600,000, the company is insolvent and unable obligations including payroll obligations now.

[31] The DIP Term Sheet requires that the company close a transaction no later than October 31, 2022 and contemplates that Phoenix will provide further interim financing in the maximum amount of USD $1,100,000 to be advanced according to the terms of the DIP facility. That amount includes the initial advance of $600,000 referred to above.

[32] Phoenix would have the benefit of a charge over the assets of the company ranking in priority to all our claims and encumbrances, except for the Administration and D&O Charges and validly perfected security in favour of equipment lessors.

[33] The BIA at section 50.6 authorizes the approval of interim financing and an associated priority charge, if the three criteria set out in that provision are met:

a. notice has been given to secured creditors likely to be affected by the DIP Charge;

b. the amount of the DIP is appropriate and required, having regard to the debtor's cash flow statement; and

c. the DIP Charge does not secure a pre-existing obligation.

[34] I am satisfied that the criteria are met here. SVB is the company's senior secured creditor and it supports the relief sought. The second ranking secured noteholders have also received notice of the relief sought. The charges rank behind any validly perfected security interests of equipment financiers so that while they have not been provided notice, the charges are subordinate to their security interests.

[35] As noted above, the cash flow statement is clear as to both the need, and the immediacy of the need, for financing.

[36] Having considered all of the factors set out in section 50.6(5) of the BIA, I am satisfied that an order made under that section is appropriate here. They will allow the company to continue to operate as a going concern. There is no other practical alternatives. This will in turn permit the best opportunity for all stakeholders to maximize their recovery.

[37] Similarly, I am satisfied that the Administration Charge should be granted, in the maximum amount of CDN $150,000, to secure the fees and disbursements of the Proposal Trustee, and counsel. I am satisfied that the requirements of section 64.2 of the BIA have been met in this regard. Again, the secured creditors who are

likely to be affected by this security are on notice. I am satisfied that the services of the Proposal Trustee and counsel are necessary the next steps as contemplated. The quantum of the proposed charge is reasonable.

[38] I am also satisfied that the indemnity and charge in favour of the remaining directors and officers should be granted, in the maximum amount of $200,000, ranking behind the Administration Charge but above the DIP Charge. It is supported by the consent of Phoenix. Again, section 64.1 of the BIA authorizes such. The company and its stakeholders will benefit from the continued leadership and governance of those directors and officers remaining in office during the process.

[39] Finally, the company owes trade suppliers the aggregate amount of approximately USD $803,500. The evidence of Mr. Dias is to the effect that the company is dependent upon the continued supply of products from those vendors to ensure that it is able to meet the needs of its customers and therefore remain in business.

[40] Moreover, the authorization to pay prefiling amounts to those vendors deemed critical to the operations of the company is capped at a maximum aggregate amount of USD $120,000 in accordance with the cash flow statement, and subject to the approval of the Proposal Trustee or further order of this Court. In the circumstances, these limited payments are appropriate (See *1732427 Ontario Inc. v. 1787930 Ontario Inc*., 2019 ONCA at para. 13, 14).

[41] While noting the consent and support of the proposed stalking horse purchaser, itself an existing creditor and equityholder, as well as SVB, the first priority ranking creditor, I am mindful of the concerns raised by Mr. McKenzie on behalf of MFT, which is a minority [indeed a small] shareholder but not a creditor. The order provides for comeback rights for MFT and/or other affected parties. MFT or other affected parties have the ability to challenge at a later date the approval of the sales process and if the company gets that far, any sale approval and vesting order. Counsel for the company confirm that nothing prevents MFT from being a potential purchaser if it elected to submit a bid.

[42] The proposed order largely tracks the Model Order of this Court except as noted above and I am satisfied that it is appropriate in the circumstances for the above reasons. Counsel for the Applicant is directed to forthwith upload to CaseLines and file with the Commercial List Office all materials that were provided to the Court on a confidential basis, which materials can now form part of the public record.

[43] Order to go as signed by me today which shall be effective without the necessity of issuing and entering.

Osborne, J.

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

Take notice that:

1. I, iS5 Communications Inc., an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.

2. Grant Thornton Limited of 11 th Floor, 200 King Street West, Box 11, Toronto, ON, M5H 3T4, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.

3. A list of the names of the known creditors with claims of $250 or more and the amounts of their claims is also attached.

4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Mississauga in the Province of Ontario, this 28th day of July 2022.

____________________
iS5 Communications Inc.
Insolvent Person

To be completed by Official Receiver:

| Filing Date | Official Receiver |
|---|---|

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

**List of Creditors with claims of $250 or more.**

| Creditor | Address | Account# | Claim Amount |
|---|---|---|---|
| 3D Hubs Manufacturing Llc | 228 East 45th Street Suite 9E<br>New York NY 10017 United States | | 914.10 |
| Alectra Utilities Corporation | PO Box 3700<br>Concord ON L4K5N2 | | 2,308.29 |
| Altran Act S.A.S. | 96 Avenue Charles de Gaulle<br>Neuilly-Sur-Seine FR 92200 France | | 224,318.80 |
| Arrow Electronics Canada Ltd. | 171 Superior Blvd, Unit 2<br>Mississauga ON L5T2L1 | | 12,912.92 |
| Artemis Captial Limited | 3395 Buena Vista Court<br>Oakville ON L6L 6W6 | | 25,000.00 |
| Avnet International (Canada) Ltd | 6950 Creditview Road<br>Mississauga ON L5N0A6 | | 72,439.62 |
| Axcen Photonics Corp. | 6F No 119 Baozhong Road<br>New Taipei City TW 23144 Taiwan | | 1,503.68 |
| Bal Global Finance 100752 - Appficiency | 5955 Airport Road, Unit 218<br>Mississauga ON L4V1W5 | | 7,311.85 |
| Bal Global Finance 149758 | 181 Bay Street 4th Floor<br>Toronto ON M5J2V8 | | 976.32 |
| Bayview Metals | 6 Barr Road<br>Ajax ON L1S3X9 | | 92,812.53 |
| Bel Power Solutions | 2390 Walsh Avenue<br>Santa Clara CA 95051 United States | | 51,408.00 |
| Bell Canada | PO Box 3650 Station Don Mills<br>Toronto ON M3C3X9 | | 661.05 |
| Cao Yang | Flat 2804, Building J, Lane 55J Xizong Road<br>Shanghai China | | 40,000.00 |
| Caravel Law | 342 Queen Street West Suit 200<br>Toronto ON M5V2A2 | | 1,421.54 |
| ClearSky Power & Technology Fund ll LLC | 11231 US Highway 1, #395<br>North Palm Beach FL 33408 USA | | 3,375,000.00 |

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

**List of Creditors with claims of $250 or more.**

| Creditor | Address | Account# | Claim Amount |
|---|---|---|---|
| ClearSky Security Fund I LC | 11231 US Highway 1, #395<br>North Palm Beach FL 33408 USA | | 1,125,000.00 |
| Clive Dias | 48 Amarillo Road<br>Brampton ON L6R 4A5 | | 25,000.00 |
| CRA<br>INSOLVENCY UNIT | 1 FRONT STREET WEST<br>SUITE 100<br>Toronto ON M5J 2X6 | | 250.00 |
| Csa Group Testing & Certification Inc | 178 Rexdale Blvd<br>Toronto ON M9W1R3 | | 1,649.80 |
| David Coutinho & Jessica Coutinho | Trustees to Coutinho Family Trust<br>6760 Kazoo Court<br>Mississauga ON L5W 1T4 | | 35,000.00 |
| Delmar International Inc. | 6399 Cantay Road<br>Mississauga ON L5R0G4 | | 1,278.77 |
| Descartes Systems(Usa) Llc | 2030 Powers Ferry Road<br>Atlanta GA 30339-5066 United States | | 12,390.61 |
| Dhyan Networks And Technologies Inc | 160 Stanford Avenue<br>Fremont CA 94539 United States | | 8,289.54 |
| Digi-Key Electronics 2296083 | PO Box 250<br>Thief River Falls MN 56701-0250 United States | | 8,949.48 |
| Eas Exhibition Services | 1400 Bayly Street Office Mall 2, Unit 4<br>Pickering ON L1W3R2 | | 3,621.65 |
| Exposystems Canada | 420 Passmore Avenue<br>Scarborough ON M1V5B1 | | 13,130.60 |
| Fasken Martineau Dumoulin Llp | 333 Bay Street, Suite 2400<br>Toronto ON M5H2T6 | | 31,693.02 |
| FedEx-Priority | FedEx-Priority PO Box 4626 Toronto St. A<br>Toronto ON M5W5B4 | | 10,863.98 |
| FPGA Technologies Ltd | 236 Carrington Drive<br>Guelph ON N1G5K3 | | 3,051.00 |

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

**List of Creditors with claims of $250 or more.**

| Creditor | Address | Account# | Claim Amount |
|---|---|---|---|
| Future Electronics | PO Box 12539<br>Montreal QC H3C5G7 | | 24,291.26 |
| GAL Power Systems Toronto Ltd. | 217 Statesman Drive<br>Mississauga ON L5S1X4 | | 1,977.50 |
| Great-West Life | 100 King Street West, 14th Floor<br>Hamilton ON L8P1A2 | | 17,127.12 |
| Ieee Pes T&D Conference & Expo | PO Box 72097<br>Roselle IL 60172 United States | | 4,112.64 |
| Indcom 19JUN14IL | 5061 Ure Street<br>Oldcastle ON N0R1L0 | | 1,481.43 |
| Indcom Lease 20JUL16IL | 5061 Ure Street<br>Oldcastle ON N0R1L0 | | 2,551.73 |
| Infinite Cables | 3993 14th Avenue<br>Markham ON L3R4Z6 | | 749.19 |
| Ingram Micro | 55 Standish Court<br>Mississauga ON L5R4A1 | | 2,499.34 |
| Integra Optics Inc. | 28 Corporate Circle<br>Albany NY 12203 United States | | 4,535.97 |
| Jc Janitorial Cleaning Services | 618 Surrey Lane<br>Burlington ON L7T3S6 | | 2,158.30 |
| Kintetsu World Express | 6405 Northam Drive<br>Mississauga ON L4V1J2 | | 478.96 |
| Lbc Capital Lease 37103L | 5035 S Service Road<br>Burlington ON K7L 6M9 | | 840.95 |
| Macnica Americas | 380 Stevens Avenue, Suite 206<br>Solana Beach CA 92075 United States | | 12,576.97 |
| Mara Technologies Inc. | 5680 14th Avenue<br>Markham ON L3S3K8 | | 29,484.30 |
| Mcmaster-Carr | PO Box 7690<br>Chicago IL 606807690 United States | | 331.41 |

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

**List of Creditors with claims of $250 or more.**

| Creditor | Address | Account# | Claim Amount |
|---|---|---|---|
| Minister Of Revenue Of Quebec | 1224226094 RS0001<br>Montreal QC H5B1A8 | | 17,987.84 |
| Ministry of Finance Collections Branch | 33 King Street West<br>PO Box 627<br>Oshawa ON L1H 8H5 | | 250.00 |
| Mouser Electronics, Inc. | PO Box 15820, Station A<br>Toronto ON M5W1C1 | | 6,050.23 |
| North America Fiber Optics | 5910 No 6 Road<br>Richmond ON V6V1Z1 | | 5,547.69 |
| Ohio Bureau Of Workers Compensation | PO Box 89492<br>Cleveland OH 441016492 United States | | 253.18 |
| Oracle Lease 113264 - Appficency | 5955 Airport Road, Unit 218<br>Mississauga ON L4V1W5 | | 2,548.90 |
| Oracle Lease 118122 - Appficency | 5955 Airport Road, Unit 218<br>Mississauga ON L4V1W5 | | 708.15 |
| Oring Indusrtrial Networking Corp | 3F, No 542-2 Zhongzheng Road<br>New Taipei TW 23148 Taiwan | | 68,412.48 |
| Pencom Canada | 420 Thompson Drive<br>Cambrdige ON N1T2K8 | | 1,561.92 |
| Phoenix Contract Venture Funds I Gmbh | Flachsmarktstraße 8, 32825<br>Blomberg Germany | | 2,250,000.00 |
| Powersonic Industries Inc. | 13 Simpson Road<br>Bolton ON L7E1E4 | | 5,027.46 |
| Questor 238067V | 675 Cochrane Drive East Tower, 6th floor<br>Markham ON L3R0B8 | | 1,598.24 |
| Radiflow Ltd | 31 Habarzel St.<br>Tel Aviv IS 69710 Israel | | 93,568.99 |
| Republic Packaging Of Canada | 127 Jardin Drive<br>Vaughan ON L4K1X5 | | 3,088.22 |
| Riches, Mckenzie & Herbert Llp | 2 Bloor Street East, Suite 1800<br>Toronto ON M4W3J5 | | 2,314.83 |

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

**List of Creditors with claims of $250 or more.**

| Creditor | Address | Account# | Claim Amount |
|---|---|---|---|
| Rlx Solutions Inc | 23 McCleary Court<br>Concord ON L4K3R6 | | 10,473.24 |
| Samtec Usa | 520 Park East Blvd<br>New Albany NY 471507251 United States | | 22,491.00 |
| Shiu Li Technology Co.,Ltd | No. 435 Yongfeng Road<br>Bade City TW 33455 Taiwan | | 2,206.69 |
| Silicon Valley Bank | 4220-181 Bay Street<br>Toronto ON M5J 2T3 | | 1,807,000.00 |
| Softchoice Lp | PO Box 57102<br>Toronto ON M5W5M5 | | 17,561.41 |
| System-On-Chip Engineering Sl | Edificio Udondo Planta 6ª Avd. de la Ribera de Axpe<br>nº50 Erandio<br>Erandio SP 48950 Spain | | 1,992.06 |
| Taitien Usa | 1801 Broadway Street<br>Charlottesville VA 22902 United States | | 22,433.17 |
| Telus | PO Box 5300<br>Burlington ON L7R4S8 | | 1,741.23 |
| Testworx | PO Box 218<br>Brockville ON K6V5V2 | | 8,075.97 |
| The Receiver General For Canada | Post Office Box 20000, Station A<br>Sudbury ON P3A5C1 | | 8,180.97 |
| Transit Components Inc. | 2425 Matheson Blvd East<br>Mississauga ON L4W5K4 | | 33,628.48 |
| Tuv Sud Canada Inc | 11 Gordon Collins Drive<br>Gormley ON L0H1G0 | | 10,141.75 |
| UCA Users Group | PO Box 315<br>Shell Knob MS 65747 United States | | 3,534.30 |
| Uline Canada Corporation | Uline Canada Corporation Box 3500<br>Mississauga ON L5M0S8 | | 507.72 |
| United Healthcare | PO Box 94019<br>Palatine IL 600944017 United States | | 5,821.54 |

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

**List of Creditors with claims of $250 or more.**

| Creditor | Address | Account# | Claim Amount |
|---|---|---|---|
| Waste Managment Of Canada Corp | 420 King Street East<br>Kitchener ON N2P2G5 | | 535.07 |
| Wurth Electronics Midcom | 121 Airport Drive<br>Watertown SD 57016330 United States | | 250.61 |
| **Total** | | | 9,709,847.56 |

iS5 Communications Inc.
Insolvent Person

Court No.

File No.

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In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

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Form 33
Notice of intention to make a proposal

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Trustee: Daniel Wootton

License: 3362

Email: Dan.Wootton@ca.gt.com

Grant Thornton Limited - Licensed Insolvency Trustee
11 th Floor, 200 King Street West, Box 11
Toronto ON M5H 3T4
Phone: (416) 366-0100 Fax: (416) 360-4948

Industry Canada / Industrie Canada

Office of the Superintendent of Bankruptcy Canada / Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Mississauga
Court No. 32-2853708
Estate No. 32-2853708

In the Matter of the Notice of Intention to make a proposal of:

**iS5 Communications Inc.**

Insolvent Person

**GRANT THORNTON LIMITED**

Licensed Insolvency Trustee

Date of the Notice of Intention: August 05, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: August 05, 2022, 13:18

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

Canada

- Proposal Consent -

In the Matter of the Proposal of
iS5 Communications Inc.
of the city of Mississauga, in the Province of Ontario

To whom it may concern,

This is to advise that we hereby consent to act as trustee under the Bankruptcy and Insolvency Act for the proposal of iS5 Communications Inc..

Dated at the City of Toronto in the Province of Ontario, this 20th day of July 2022.

Grant Thornton Limited - Licensed Insolvency Trustee
Per:

Daniel Wootton - Licensed Insolvency Trustee
11 th Floor, 200 King Street West, Box 11
Toronto ON M5H 3T4
Phone: (416) 366-0100 Fax: (416) 360-4948

This is Exhibit "D" referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

PHOENIX CONTACT GmbH & Co. KG
Flachsmarktstraße 8
32825 Blomberg, Germany
Telefon: +49 5235 300
Telefax: +49 5235 3-41200
Internet: http://www.phoenixcontact.com
USt-Id-Nr.: DE124613250
WEEE-Reg.-Nr.: DE50738265

**August 3rd, 2022**

**VIA EMAIL**

iS5 Communications Inc.
#5895 Ambler Drive
Mississauga, Ontario, L4W 5B7

Attention: **Clive Dias, CEO iS5**

**Re: Proposal to Consider Purchase of iS5 Communications Inc.**

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This letter sets forth a non-binding proposal with respect to the potential acquisition (the "**Proposed Transaction**") by PHOENIX CONTACT GmbH & Co. KG or one of its affiliates (the "**Purchaser**") of iS5 Communications Inc. (the "**Corporation**") as part of a Division I Proposal proceeding under the *Bankruptcy and Insolvency Act* (Canada), to be commenced by the Corporation (the "**Proposal Proceeding**"). In order to initiate the process, the Purchaser wishes to conduct a due diligence inquiry of the Corporation prior to finalizing any definitive purchase agreement with respect to the Proposed Transaction (the "**Definitive Agreement**"). The Purchaser is providing this proposal to the Corporation on the basis that once executed by all parties, it will allow the Purchaser's due diligence investigation to proceed in a prompt and expeditious manner.

1. **Structure.** The Proposed Transaction shall be a stalking horse transaction and if it is the successful bid, it will be implemented pursuant to a Definitive Agreement that shall be approved pursuant to an Approval and Vesting Order (the "**Vesting Order**") granted by the Ontario Superior Court of Justice (Commercial List) in the Proposal Proceeding. During the course of its due diligence investigation, the Purchaser will determine how it wishes to structure the Proposed Transaction.

2. **Purchase Price.** The purchase price (the "**Purchase Price**") for the Corporation is expected to be in the range (the "**Price Range**") of between USD$5,000,000 and USD$7,000,000 (subject to adjustment as described below) and will be payable on the Closing Date (as defined below). The Purchase Price assumes that all bank indebtedness, lines of credit, shareholder loans and any other operating or term loans shall be zero on the Closing Date. The foregoing preliminary valuation of the Corporation is subject to the due diligence investigation and review described below.

The Purchase Price will be subject to a post-closing adjustment, if required, based on financial audit, evaluation of debt, conversion or repayment of the convertible notes, assessment of the key employees.

Subject to the exclusion below, all amounts including all principal and interest (not including, for the avoidance of doubt, any repayment premiums on the convertible notes) owing to PHOENIX CONTACT Venture Funds I GmbH by the Corporation as at the Closing Date (the "**Phoenix Debt**") (and only the Phoenix Debt) shall be credited against the Purchase Price payable for the Corporation, *provided, however*, that for the purpose of calculating the amount to be credited against the Purchase Price the Phoenix Debt shall not include any portion of the Phoenix Debt that ranks *pari passu* with other indebtedness of the Corporation and that would not be paid in full from the cash portion of the Purchase Price.

3. **Timing.** Immediately upon signing this letter, the Purchaser and the Corporation will work diligently and in good faith to settle the Definitive Agreement with a view to completing the transaction on or before September 15, 2022 (the "**Closing Date**"). The Purchaser and the Corporation agree that it is in the best interests of all stakeholders of the Corporation that the parties work expeditiously toward completing the transaction on or about the Closing Date in order to cap the amount of bridge financing required by the Corporation. The Purchaser or its Representatives (as defined below) will prepare the first draft of the Definitive Agreement.

4. **Definitive Agreement.** The Definitive Agreement will, except as set out in this letter, be of the type and contain covenants, representations and warranties, terms and conditions typical of a transaction of the nature and size of the Proposed Transaction. Among other things, the closing of the Proposed Transaction will be subject to the following conditions, among others: (i) the Vesting Order has been granted by the Court, in form and substance satisfactory to the Purchaser in its sole discretion, (ii) the Purchaser has completed a due diligence investigation and review of the Corporation and its properties and assets, satisfactory to the Purchaser in its sole and subjective discretion; (iii) any necessary approvals and third party consents to the Proposed Transaction have been obtained or otherwise addressed in the Vesting Order; and (iv) all intellectual property owned or used by the Corporation in the business can be transferred to the Purchaser in accordance with the terms of the Definitive Agreement. The Definitive Agreement will contain: (i) non-competition covenants by certain significant shareholders and certain employees, to be determined during the course of due diligence in favour of the Purchaser; and (ii) a non-solicitation covenant from the Corporation and from certain of its significant shareholders and certain employees in favour of the Purchaser.

5. **Employees.** The Purchaser understands that there are approximately 40 individuals employed by the Corporation. Subject to the outcome of its due diligence review, the Purchaser may offer to employ all employees of the Corporation. All severance and termination costs and expenses relating to any employees who do not accept any offer of employment received from the Purchaser and all other employees of the Corporation who are not offered employment by the Purchaser will be the sole responsibility of the Corporation.

Based on its initial due diligence, the Purchaser will retain all or almost all employees.

6. **Interim Period.** During the period from the signing of this letter through the execution of the Definitive Agreement (the "**Interim Period**"), the Corporation will: (a) conduct its business in the ordinary course in a manner consistent with past practice; (b) maintain its properties and other assets in good working condition (normal wear and tear excepted); (c) use its best efforts to maintain the business and employees, customers, assets and operations as an ongoing concern in accordance with past practice; (d) not enter into any transaction other than any bridge financing (including the proposed bridge debtor-in-possession financing (the "**DIP Facility**")), or in the ordinary course of its business and consistent with past practice on terms which are arms length; and (e) give the Purchaser prompt written notice of any material change in or affecting the business, affairs, operations, assets, liabilities or capital of the Corporation. The Purchaser acknowledges that the Corporation's ability to pay its debts as they come due during the Interim Period is contingent upon obtaining bridge financing (including the DIP Facility) for the Interim Period.

7. **Effect of this Letter.** Sections 1, 2, 3, 4, 5 and 6 of this letter are not intended to and do not constitute a legally binding obligation of the Purchaser to purchase the Corporation. The parties acknowledge and confirm that until the Definitive Agreement is signed, there are no legally binding obligations between the Purchaser and the Corporation relating to the Proposed Transaction, whether set out in this letter or otherwise, except for the obligations set out in Section 6 and Sections 8 through 16 below, which for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, are and shall remain legally binding on the Purchaser and the Corporation, subject to Section 14.

8. **Due Diligence.** Until the earlier of the Closing Date or the date either party provides written notice to the other party terminating negotiations, the Corporation shall give the Purchaser and the agents, directors, officers, employees, consultants, representatives and advisers (the "**Representatives**") of the Purchaser access to, and shall make available to them for inspection and review, the properties and assets of the Corporation and all books of account, audit work papers, business and financial records, leases, agreements and other documents of or relating to the Corporation and its property, assets and liabilities, its properties and assets that the Purchaser or its Representatives reasonably consider to be necessary or advisable. The Corporation shall make the auditor, legal counsel and other Representatives of the Corporation available for consultation and verification of any information so obtained.

9. **Confidentiality.** Except as and to the extent required by law, (a) no party shall disclose or permit its Representatives to disclose any Confidential Information (as defined below) of another party hereto, and (b) no party shall use, or permit its Representatives to use, any Confidential Information of another party hereto other than in connection with its evaluation of the Proposed Transaction. For purposes of this paragraph, "**Confidential Information**" means all information about a party or its subsidiaries or affiliates or their respective businesses, in

whatever form communicated or maintained, that such party (the "**Disclosing Party**") discloses to, or that is gathered by inspection by, another party or any of its Representatives (the "**Receiving Party**"); provided that "**Confidential Information**" does not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of its obligations under this provision, (ii) is or was received by the Receiving Party, on a non confidential basis from a source other than the Disclosing Party if such source is not prohibited by the Disclosing Party from disclosing the information to the Receiving Party, or (iii) was known by the Receiving Party prior to disclosure under this provision and was not subject to any confidentiality obligation on the part of the Receiving Party.

10. **Exclusive Dealing.** The Corporation acknowledges that the due diligence investigation and review contemplated by this letter will involve the expenditure of substantial time and money by the Purchaser. The Corporation shall immediately suspend and cease any negotiations or other discussions or communications of any nature with any other party concerning any Alternative Transaction (as defined below). During the period from the date this letter is signed until the earlier of (i) 90 days from the date this letter is signed, (ii) the date the Definitive Agreement is signed by the parties; or (iii) the commencement of a court-approved sale process in the Proposal Proceeding (the "**Exclusivity Period**"), neither the Corporation nor any of its Representatives or controlling shareholders shall directly or indirectly in any manner (a) entertain, solicit or encourage, (b) furnish or cause to be furnished any information to any persons or entities (other than the Purchaser or its Representatives) in connection with, or (c) negotiate or otherwise pursue, any proposal or discussions for or in connection with any equity or debt investment in the Corporation other than the DIP Facility, or any possible sale of the Corporation, no matter how structured, including without limitation, by sale or license of all or any significant part of the properties and assets of the Corporation, or by any merger or other business combination involving the Corporation or otherwise (each of the foregoing proposals or discussions, whether written or oral, an "**Alternative Transaction**"). The Corporation shall immediately notify the Purchaser in writing of (i) the receipt during the Exclusivity Period of any proposal for an Alternative Transaction or any requests for any information relating to the Corporation or for access to the properties, books or records of the Corporation by any person or entity which has informed the Corporation or any of its Representatives or shareholders that such person or entity is considering making, or has made, a proposal for an Alternative Transaction, and (ii) the terms of any such Alternative Transaction. The Corporation shall be responsible for any breach by its Representatives or controlling shareholders of any of the provisions of this Section 10.

11. **Public Announcement.** Neither the Purchaser nor the Corporation shall make any public announcement concerning the Proposed Transaction or related negotiations without the other party's prior written approval, except as may be required by law or rule of any stock exchange. If such an announcement is required by law or rule of any stock exchange, the party required to make the announcement shall inform the other party of the contents of the announcement proposed to be made and shall use its reasonable efforts to obtain the other

party's approval for the announcement, which approval may not be unreasonably withheld.

12. **Expenses.** Each of the Purchaser and the Corporation shall be responsible for and bear all of its own costs and expenses incurred in connection with the Proposed Transaction, including any broker's or finder's fees and expenses of their respective Representatives, incurred at any time in connection with pursuing or consummating the Proposed Transaction.

13. **Assignment.** Neither party shall assign any of its rights and obligations provided for or referred to in this letter without the prior written consent of the other party.

14. **Termination.** Sections 8, 9, 10, 11, 13 and 15 shall survive termination of this letter. Other than Sections 8, 9, 10, 11, 13 and 15, this letter shall terminate without liability on the earlier of: (i) the date the Definitive Agreement is signed by the parties; (ii) the date following the Exclusivity Period that a party provides written notice to the other party terminating negotiations; and (iii) the date the parties agree in writing to terminate negotiations. For greater certainty, the Purchaser shall be entitled to terminate this letter if the Corporation is assigned into bankruptcy (either voluntarily or involuntarily) or if the proposal trustee appointed in the Proposal Proceeding refuses to proceed with the Proposed Transaction.

15. **Counterparts.** This letter may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

16. **Governing Law.** This letter shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

To confirm the foregoing, please sign below and return to the undersigned.

Yours very truly,

**PHOENIX CONTACT GMBH & CO. KG**

By: i.V. M. Böker, 05/08/2022
Name: Marcus Böker
Title: Senior Director M&A

Digital signiert von Leidecker, Ulrich (pblu01)
DN: cn=Leidecker, Ulrich (pblu01)
Datum: 2022.08.05 13:32:43 +02'00'

By: Ulrich Leidecker
Name: Ulrich Leidecker
Title: President of the Business Area Industry Management & Automation and

Chief Operating Officer

Confirmed this __3rd ___ day of __August___, 2022.

**IS5 COMMUNICATIONS INC.**

By:_______________________________

Name: Clive Dias
Title: President and CEO

This is Exhibit “E” referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

# LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (this "**Agreement**") dated as of May 15, 2019 (the "**Effective Date**") between **SILICON VALLEY BANK**, a California corporation with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 ("**Bank**"), and **IS5 COMMUNICATIONS INC.**, a corporation organized under the laws of the Province of Ontario ("**Borrower**"), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

## 1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

## 2. LOAN AND TERMS OF PAYMENT

**2.1 Promise to Pay**. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

**2.2 Term Loan Advances**.

(a) Availability. Subject to the terms and conditions of this Agreement, upon Borrower's request, during the Draw Period, Bank shall make term loan advances available to Borrower up to an aggregate original principal amount not to exceed Two Million Dollars ($2,000,000) (each a "**Tranche 1 Advance**"). Upon Borrower's request, during the Draw Period, Bank shall make additional term loan advances available to Borrower up to an aggregate amount not to exceed One Million Dollars (each a "**Tranche 2 Advance**" and collectively, the "**Tranche 2 Advances**"), but only after the occurrence of the Tranche 2 Event. The Tranche 1 Advances and Tranche 2 Advances are hereinafter referred to singly as a "**Term Loan Advance**" and collectively as the "**Term Loan Advances**". The aggregate amount of Term Loan Advances available hereunder is Three Million Dollars ($3,000,000). After repayment, no Term Loan Advance (or any portion thereof) may be reborrowed. On the Effective Date and in accordance with the terms of this agreement, Borrower shall request a Term Loan Advance in an amount not less than Seven Hundred Fifty Thousand Dollars ($750,000).

(b) Interest Payments. With respect to each Term Loan Advance, commencing on the first Payment Date following the Funding Date of such Term Loan Advance and continuing on the Payment Date of each month thereafter, Borrower shall make monthly payments of interest, in arrears, on the principal amount of such Term Loan Advance at the rate set forth in Section 2.3(a).

(c) Repayment. Term Loan Advances shall be "interest only" for the duration of the Draw Period with interest payable in accordance with Section 2.3(d) hereof. Thereafter, Term Loan Advances shall be payable (i) in thirty six (36) equal monthly installments of principal plus (ii) monthly payments of accrued interest at the rate set forth in Section 2.3(a). All outstanding principal and accrued interest with respect to the Term Loan Advances, as well as all other outstanding Obligations with respect to the Term Loan Advances, shall be immediately due and payable in full on the Term Loan Maturity Date.

(d) Mandatory Prepayment Upon an Acceleration. If a Term Loan Advance is accelerated following the occurrence and during the continuation of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of: (i) all outstanding principal plus accrued and unpaid interest, (ii) the Prepayment Premium, plus (iii) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to any past due amounts.

(e) Permitted Prepayment. Borrower shall have the option to prepay all, but not less than all, of the Term Loan Advances, provided Borrower (i) delivers written notice to Bank of its election to prepay the

Term Loan Advances at least ten (10) days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the Term Loan Advances, (B) the Prepayment Premium and (C) all other sums, if any, that shall have become due and payable with respect to the Term Loan Advances, including interest at the Default Rate with respect to any past due amounts.

**2.3 Payment of Interest on the Credit Extensions**.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding for each Term Loan Advance shall accrue interest at a floating per annum rate equal to the greater of (i) three-quarter percentage points (0.75%) above the Prime Rate, and (ii) six and one-quarter percentage points (6.25%), which interest shall be payable monthly in accordance with Section 2.3(d) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percentage points (5.0%) above the rate that is otherwise applicable thereto (the "**Default Rate**"). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Payment; Interest Computation. Interest is payable monthly on the Payment Date of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Eastern time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. For purposes of the *Interest Act* (Canada): (x) whenever any interest or fee under this Agreement is calculated on the basis of a period of time other than a calendar year, such rate used in such calculation, when expressed as an annual rate, is equivalent to (A) such rate, multiplied by (B) the actual number of days in the calendar year in which the period for which such interest or fee is calculated ends, and divided by (C) the number of days in such period of time; (y) the principle of deemed reinvestment of interest shall not apply to any interest calculation under this Agreement; and (z) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(e) Criminal Interest. If any provision of this Agreement would oblige Borrower to make any payment of interest or other amount payable to Bank in an amount or calculated at a rate which would be prohibited by applicable law or would result in a receipt by Bank of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by Bank of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), first, by reducing the amount or rate of interest and thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to Bank which would constitute "interest" for purposes of section 347 of the Criminal Code (Canada).

**2.4 Fees**. Borrower shall pay to Bank:

(a) Commitment Fee. A fully earned, non-refundable commitment fee of Seven Thousand Five Hundred Dollars ($7,500.00), on or before the Effective Date;

(b) Prepayment Premium. The Prepayment Premium, when due hereunder; and

(c) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

(d) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.4 pursuant to the terms of Section 2.5(c). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.4.

**2.5 Payments; Application of Payments; Debit of Accounts.**

(a) All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

**2.6 Withholding.** Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

## 3. CONDITIONS OF LOANS

**3.1 Conditions Precedent to Initial Credit Extension**. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed signatures to the Loan Documents;

(b) duly executed original signatures to the Warrant, together with a capitalization table and copies of Borrower's equity documents;

(c) duly executed signatures to the Control Agreement(s), if any;

(d) the Operating Documents and certificate of compliance of Borrower certified by the Ontario Ministry of Government and Consumer Services and each jurisdiction in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(e) an officer's certificate of Borrower with respect to Borrower's articles, by-laws, shareholders' agreement, incumbency and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents;

(f) duly executed signatures to the completed Borrowing Resolutions for Borrower;

(g) certified copies, dated as of a recent date, of financing statement searches, as Bank may request, accompanied by written evidence (including, without limitation, any UCC termination statements, PPSA termination statements or PPSA confirmations/estoppels, as applicable) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(h) duly executed signatures to a payoff and discharge letter evidencing that Indebtedness owed by Borrower to Export Development Canada in respect of PPSA registration bearing registration no. 20160621 1200 1862 9343 and reference file no. 717859953, and the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statement(s) and/or control agreement(s), will be terminated and discharged and all amounts owing thereunder or in connection therewith shall be repaid in full upon receipt of such payment;

(i) PPSA termination statements, evidencing that the PPSA registrations in favor of Royal Bank of Canada identified by file numbers 689589234 and 718578576 have been fully discharged;

(j) the Perfection Certificate of Borrower, together with the duly executed signature thereto;

(k) bailee waivers in favor of Bank for each third party warehouse location, together with the duly executed signatures thereto;

(l) a legal opinion of Borrower's counsel dated as of the Effective Date together with the duly executed signature thereto in form and substance acceptable to Bank;

(m) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payee and/or additional insured clauses or endorsements in favor of Bank; and

(n) payment of the balance of the fees and Bank Expenses then due as specified in Section 2.4 hereof.

**3.2 Conditions Precedent to all Credit Extensions**. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) timely receipt of an executed Payment/Advance Form;

(b) in respect of any Tranche 2 Advance, evidence satisfactory to Bank, in its sole discretion that the Tranche 2 Event has occurred, as well as any materials and documents required by Section 3.4;

(c) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Payment/Advance Form and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(d) Bank determines to its satisfaction that there has not been any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank.

**3.3 Covenant to Deliver**. Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

**3.4 Procedures for Borrowing**. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan Advance set forth in this Agreement, to obtain a Term Loan Advance, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile or telephone by 12:00 noon Eastern time on the Funding Date of the Term Loan Advance. Bank shall have received satisfactory evidence that the provision of such notices and the requests for Term Loan Advances have been approved by the Board. In connection with such notification, Borrower must promptly deliver to Bank by electronic mail or facsimile a completed Payment/Advance Form executed by an Authorized Signer together with such other reports and information, as Bank may request in its sole discretion. Bank shall credit proceeds of any Term Loan Advance to the Designated Deposit Account. Bank may make Term Loan Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Term Loan Advances are necessary to meet Obligations which have become due.

## 4. CREATION OF SECURITY INTEREST

**4.1 Grant of Security Interest.** Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.

**4.2 Priority of Security Interest**. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

**4.3 Authorization to File Financing Statements**. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

## 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

**5.1 Due Organization, Authorization; Power and Authority**. Borrower is duly existing and in good standing in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled "Perfection Certificate" (the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's business identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any business identification number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

**5.2 Collateral**. Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the terms of Section 6.6(b) (excluding the Canadian Accounts). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

**5.3 Litigation**. Except as noted on the Perfection Certificate, there are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Fifty Thousand Dollars ($50,000.00).

**5.4 Financial Statements; Financial Condition**. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank by submission to the Financial Statement Repository or otherwise submitted to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to the Financial Statement Repository or otherwise submitted to Bank.

**5.5 Solvency**. The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

**5.6 Regulatory Compliance**. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

**5.7 Subsidiaries; Investments**. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions**. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, provincial, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Five Thousand Dollars ($5,000.00).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**5.9 Use of Proceeds**. Borrower shall use the proceeds of the Credit Extensions as working capital, to fund its general business requirements and to repay existing Indebtedness of Borrower owing to Export Development Canada, and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure**. No written representation, warranty or other statement of Borrower in any report, certificate or written statement submitted to the Financial Statement Repository or otherwise submitted to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written reports, written certificates and written statements submitted to the Financial Statement Repository or otherwise submitted to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the written reports, written certificates or written statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

**5.11 Definition of "Knowledge."** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

## 6. AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

**6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

**6.2 Financial Statements, Reports, Certificates.** Provide Bank with the following by submitting to the Financial Statement Repository or otherwise submitting to Bank:

(a) Monthly Financial Statements. As soon as available, but no later than thirty (30) days after the last day of each month, a company prepared balance sheet and income statement covering Borrower's operations for such month in a form acceptable to Bank (the "**Monthly Financial Statements**");

(b) Monthly Compliance Statement. Within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a completed Compliance Statement, confirming that, as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth such other information as Bank may reasonably request;

(c) Board-Approved Operating Budget and Projections. As soon as available, but no later than thirty (30) days after the last day of Borrower's fiscal year and contemporaneously with any updates thereto, Board-approved operating budget and projections as to the then current fiscal year in a form acceptable to Bank;

(d) Annual Audited Financial Statements. As soon as available, but no later one hundred eighty (180) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;

(e) Accounts. Within thirty (30) days after the end of each month, the balance of each account of Borrower held at any bank or financial institution other than Bank or Bank's Affiliates;

(f) Capitalization Table. As soon as available, but no later than thirty (30) days after a change in the fully diluted ownership interest in Borrower, an updated capitalization table for Borrower;

(g) Lease Statement. Within three (3) days of the day on which rent is due each month under that certain lease between Borrower, as tenant, and Marshall-Barwick Properties Inc., as landlord, for the premises municipally know as 5895 Ambler Drive, Mississauga, Ontario L4W 5B7, Borrower shall deliver to Bank a lease statement in the form attached hereto as Exhibit D (a "**Lease Statement**");

(h) Other Statements. Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(i) SEC Filings. In the event that Borrower becomes subject to the reporting requirements under the Exchange Act within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;

(j) Customer Due Diligence: Prompt written notice of any changes to the beneficial ownership information set out in items 14(A) and 14(B) of the Perfection Certificate. Borrower understands and acknowledges that Bank relies on true, accurate and up-to-date beneficial ownership information to meet Bank's regulatory obligations to obtain, verify and record information about the beneficial owners of its legal entity customers;

(k) Legal Action Notice. A prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Two Hundred Fifty Thousand Dollars ($250,000.00) or more; and

(l) Other Financial Information. Promptly, from time to time, such information regarding Borrower or compliance with the terms of any Loan Documents as reasonably requested by Bank.

Any submission by Borrower of a Compliance Statement, Lease Statement or any other financial statement submitted to the Financial Statement Repository pursuant to this Section 6.2 or otherwise submitted to Bank shall be deemed to be a representation by Borrower that (a) as of the date of such Compliance Statement, Lease Statement or other financial statement, the information and calculations set forth therein are true, accurate and correct, (b) as of the end of the compliance period set forth in such submission, Borrower is in complete compliance with all required covenants except as noted in such Compliance Statement, Lease Statement or other financial statement, as applicable; (c) as of the date of such submission, no Events of Default have occurred or are continuing; (d) all representations and warranties other than any representations or warranties that are made as of a specific date in Article 5 remain true and correct in all material respects as of the date of such submission except as noted in such Compliance Statement or other financial statement, as applicable; (e) as of the date of such submission, Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8; and (f) as of the date of such submission, no Liens have been levied or claims made against Borrower relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

**6.3 Inventory; Returns**. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower must promptly notify Bank of all returns, recoveries, disputes and claims that involve more than Two Hundred Fifty Thousand Dollars ($250,000.00).

**6.4 Taxes; Pensions**. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, provincial, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**6.5 Insurance.**

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(b) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations.

(c) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.5 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Bank deems prudent.

**6.6 Operating Accounts.**

(a) Within sixty days of the Effective Date (the "**Transition Period**"), maintain all of Borrower's and its Subsidiaries' U.S. dollar depository and operating accounts, securities/investment accounts and excess funds with Bank and Bank's Affiliates; provided, however, that Borrower may maintain its Canadian dollar operating/depository accounts with Royal Bank of Canada, as described in the Perfection Certificate (the "**Canadian Accounts**"). Any Guarantor shall maintain all U.S. dollar depository, operating and securities/investment accounts with Bank and Bank's Affiliates.

(b) In addition to, and without limiting the restrictions in 6.6(a), Borrower shall provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply (i) during the Transition Period, (ii) to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such and (iii) to the Canadian Accounts.

**6.7 Protection of Intellectual Property Rights.**

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within ten (10) days of entering into or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

**6.8 Litigation Cooperation**. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

**6.9 Access to Collateral; Books and Records.** At reasonable times, on one (1) Business Days' notice, (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, the right to inspect the Collateral and the right to audit and copy Borrower's Books. The foregoing inspections and audits shall be conducted at Borrower's expense and no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The charge therefor shall be One Thousand Dollars ($1,000) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance and Borrower cancels or seeks to reschedule the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank's rights or remedies) Borrower shall pay Bank a fee of One Thousand Dollars ($1,000) plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

**6.10 Formation or Acquisition of Subsidiaries.** Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, at the time that Borrower forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, Borrower shall (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder, together with such appropriate financing statements and/or Control Agreements, all in form and substance satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance satisfactory to Bank, including one or more opinions of counsel satisfactory to Bank, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above.

**6.11 Further Assurances**. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to the Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

## 7. NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in the ordinary course of its business for the payment of ordinary course business expenses in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; and (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business.

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within five (5) days after such Key Person's departure from Borrower; or (ii) enter into any transaction or series of related transactions in which the shareholders of Borrower who were not shareholders immediately prior to the first such transaction own more than forty percent (40.0%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction).

Borrower shall not, without providing at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars ($250,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization or change the location of its chief executive office or registered office, (3) change its organizational structure or type, (4) change its legal name, or (5) change any business identification number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank.

**7.3 Mergers, Amalgamations or Acquisitions.** Merge, amalgamate, or consolidate, or permit any of its Subsidiaries to merge, amalgamate, or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary). A Subsidiary may merge, amalgamate, or consolidate into another Subsidiary or into Borrower. In addition, Borrower shall not continue, or permit any Subsidiary to continue, into another jurisdiction.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

**7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6(b) hereof.

**7.7 Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock of Borrower, provided that Borrower may repurchase the stock of former employees or consultants pursuant to stock repurchase which individually or in the aggregate in any fiscal year are equal to or less or than Two Hundred Fifty Thousand Dollars ($250,000.00), or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

**7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

## 8. <u>EVENTS OF DEFAULT</u>

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

**8.1 Payment Default**. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Term Loan Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

**8.2 Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.3, 6.5, 6.6, 6.7 6.9 or 6.10, or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

**8.3 Material Adverse Change**. A Material Adverse Change occurs;

**8.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

**8.5 Insolvency**. (a) Borrower or any of its Subsidiaries is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and is not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements**. There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of One Hundred Thousand Dollars ($100,000.00); or (b) any breach or default by Borrower, the result of which could have a material adverse effect on Borrower's business;

**8.7 Judgments; Penalties**. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars ($250,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

**8.8 Misrepresentations**. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

**8.9 Subordinated Debt**. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or any applicable subordination or intercreditor agreement; or

**8.10 Governmental Approvals.** Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal (i) causes, or could reasonably be expected to cause, a Material Adverse Change, or (ii) adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

## 9. BANK'S RIGHTS AND REMEDIES

**9.1 Rights and Remedies**. Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to at least (A) one hundred five percent (105.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in Dollars remaining undrawn, and (B) one hundred ten percent (110.0%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit denominated in a Foreign Currency remaining undrawn (plus, in each case, all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds. Borrower shall collect all payments interest for Bank and if requested by Bank, immediately deliver the payments to Bank in the form received from the Account Debtor, with proper endorsements for deposit;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(h) seize, ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books;

(k) obtain from any court of competent jurisdiction an order for the sale or foreclosure of any or all of the Collateral;

(l) appoint in writing a receiver or receiver and manager (a "**Receiver**") for all or any part of the Collateral who shall be vested with all of the Bank's rights and remedies under this Agreement, at law or in equity. Any such Receiver, with respect to responsibility for its acts, shall, to the extent permitted by applicable law, be deemed to the agent of the Borrower and not the Bank;

(m) obtain from any court of competent jurisdiction an order for the appointment of a Receiver of the Borrower or of any or all of the Collateral;

(n) realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, on such terms and conditions as the Bank may deem advisable and at such prices as it may deem best; and

(o) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

**9.2 Power of Attorney**. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable following and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) demand, collect, sue, and give releases to any Account Debtor for monies due, settle and adjust disputes and claims about the Accounts directly with Account Debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses); (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and the Loan Documents have been terminated. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and the Loan Documents have been terminated.

**9.3** **Protective Payments**. If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

**9.4** **Application of Payments and Proceeds.** Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

**9.5** **Bank's Liability for Collateral**. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6** **No Waiver; Remedies Cumulative**. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7** **Demand Waiver**. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

## 10. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and seven (7) Business Days after deposit in the U.S. mail or Canada Post, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: iS5 Communications Inc.
5895 Ambler Drive
Mississauga, Ontario, L4W 5B7

Attn: Clive Dias
Email: CliveDias@is5com.com

If to Bank: Silicon Valley Bank
275 Grove Street, Suite 2-200
Newton, Massachusetts 02466
Attn: Tyler Kirk
Email: tkirk@SVB.com

with a copy to: Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9
Attn: Mr. Tony Gioia
Fax: (416) 863.1515
Email: tgioia@airdberlis.com

## 11. CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER

Except as otherwise expressly provided in any of the Loan Documents, Massachusetts law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Boston, Massachusetts; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL**.

This Section 11 shall survive the termination of this Agreement.

## 12. GENERAL PROVISIONS

**12.1 Termination Prior to Term Loan Maturity Date; Survival**. All covenants, representations and warranties made in this Agreement shall continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Term Loan Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

**12.2 Successors and Assigns**. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrant, as to which assignment, transfer and other such actions are governed by the terms thereof).

**12.3 Indemnification**. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

**12.4 Time of Essence**. Time is of the essence for the performance of all Obligations in this Agreement.

**12.5 Severability of Provisions**. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.6 Correction of Loan Documents**. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

**12.7 Amendments in Writing; Waiver; Integration**. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**12.8 Counterparts**. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.9 Confidentiality**. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive termination of this Agreement.

**12.10 Right of Set Off.** Borrower hereby grants to Bank, a Lien, security interest and right of set off as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a Bank subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, at any time following demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.11 Electronic Execution of Documents**. The words “execution,” “signed,” “signature” and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or equivalent legislation in another jurisdiction.

**12.12 Captions**. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**12.13 Construction of Agreement**. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**12.14 Relationship**. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm’s-length contract.

**12.15 Third Parties**. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

## 13. DEFINITIONS

**13.1 Definitions**. As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” is as to any Person any “account” of such Person as “account” is defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to such Person.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"**Affiliate**" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Authorized Signer**" is any individual listed in Borrower's Borrowing Resolution who is authorized to execute the Loan Documents, including any Credit Extension request, on behalf of Borrower.

"**Bank**" is defined in the preamble hereof.

"**Bank Entities**" is defined in Section 12.9.

"**Bank Expenses**" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

"**Bank Services**" are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a "**Bank Services Agreement**").

"**Bank Services Agreement**" is defined in the definition of Bank Services.

"**Board**" is Borrower's board of directors.

"**Borrower**" is defined in the preamble hereof.

"**Borrower's Books**" are all Borrower's books and records including ledgers, federal, provincial and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Borrowing Resolutions**" are, with respect to any Person, those resolutions adopted by such Person's board of directors (and, if required under the terms of such Person's Operating Documents, shareholders) and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary or other senior officer on behalf of such Person certifying (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that set forth as a part of or attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents, including any Credit Extension request, on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which Bank is closed, and if any determination of a "Business Day" shall relate to an FX Contract, the term "Business Day" shall mean a day on which dealings are carried on in the country of settlement of the Foreign Currency.

"**Canadian Accounts**" is defined in Section 6.6(a).

"**Cash Equivalents**" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or Canada or any agency or any State or Province thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group, Moody's Investors Service, Inc. or DBRS; (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

"**Claims**" is defined in Section 12.3.

"**Code**" is (a) with respect to any assets located in the United States, the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the Commonwealth of Massachusetts; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the Commonwealth of Massachusetts, the term "**Code**" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions, and (b) with respect to any assets located in Canada, the PPSA as amended and as may be further amended and in effect from time to time; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Personal Property Security Act or equivalent legislation in effect in a provincial jurisdiction other than Ontario, the term "Code" shall mean the Personal Property Security Act or equivalent legislation as enacted and in effect in such other province solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Borrower described on Exhibit A.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"**Compliance Statement**" is that certain certificate in the form attached hereto as Exhibit B.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Credit Extension**" is any Term Loan Advance, or any other extension of credit by Bank for Borrower's benefit.

"**Default Rate**" is defined in Section 2.3(b).

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" is the account denominated in Dollars, account number 3302643654, maintained by Borrower with Bank.

"**Dollars**," "**dollars**" or use of the sign "**$**" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "$" sign to denote its currency or may be readily converted into lawful money of the United States.

"**Dollar Equivalent**" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"**Draw Period**" is the period of time commencing upon the occurrence of the Effective Date and continuing through the earlier to occur of (a) April 30, 2020 or (b) an Event of Default.

"**Effective Date**" is defined in the preamble hereof.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Event of Default**" is defined in Section 8.

"**Exchange Act**" is the Securities Exchange Act of 1934, as amended.

"**Financial Statement Repository**" is Bank's e-mail address, GroupCanadaEastReporting@svb.com, or such other means of collecting information approved and designated by Bank after providing notice thereof to Borrower from time to time.

"**Foreign Currency**" means lawful money of a country other than the United States.

"**Funding Date**" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

"**GAAP**" means, with respect to any Person, generally accepted accounting principles in the United States or Canada as in effect from time to time with respect to such Person, including IFRS.

"**General Intangibles**" is all "general intangibles" or "intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

**"Governmental Authority**" is any nation or government, any federal, provincial, state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**IFRS**" are the International Financial Reporting Standards, a collection of guidelines and rules set by the International Accounting Standards Board (www.iasb.org) which are applicable to the circumstances as of the date of determination.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Person**" is defined in Section 12.3.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Intellectual Property**" means, with respect to any Person, all of such Person's right, title, and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to such Person;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"**Key Person**" is each of Clive Dias, who is the Chief Executive Officer of Borrower as of the Effective Date.

"**Letter of Credit**" is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"**Loan Documents**" are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Warrant, the Perfection Certificate, any Bank Services Agreement, any Subordination Agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement by Borrower with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

"**Material Adverse Change**" is (a) a material impairment in the perfection or priority of Bank's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Monthly Financial Statements**" is defined in Section 6.2(a).

"**Obligations**" are Borrower's obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the Prepayment Premium, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, all obligations relating to Bank Services and any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents.

"**Operating Documents**" are, for any Person, such Person's formation documents, as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment/Advance Form**" is that certain form attached hereto as Exhibit C.

"**Payment Date**" is the first ($1^{st}$) calendar day of each calendar month.

"**Perfection Certificate**" is defined in Section 5.1.

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;

(g) Indebtedness of any Subsidiary to Borrower to the extent that such Indebtedness is permitted as an Investment by the Borrower in such Subsidiary pursuant to the definition of "Permitted Investments";

(h) Indebtedness consented to by Bank in writing after the date hereof; and

(i) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"**Permitted Investments**" are:

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate;

(b) Investments consisting of Cash Equivalents;

(c) Investments consisting of deposit accounts over which Bank holds a first priority perfected security interest;

(d) Investments by Borrower in a Subsidiary not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate in any fiscal year; and

(e) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower' Board of Directors, in each case up to a maximum of One Hundred Thousand ($100,000) per year;

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, <u>provided</u> that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens or capital leases (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Two Hundred Fifty Thousand Dollars ($250,000.00) annually, in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, <u>if</u> the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) (i) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory securing liabilities in the aggregate amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings to prevent forfeiture or sale of the property subject thereto, and (ii) Liens in favour of a bailee that has entered into a bailee agreement with the Bank in accordance with Section 7.2; and

(e) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, unlimited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**PPSA**" means the *Personal Property Security Act* (Ontario), as amended and as may be further amended and in effect from time to time.

"**Prepayment Premium**" means (i) 3.0% of the prepaid amount if prepayment occurs within eighteen (18) months of the Effective Date; or (ii) 0% of the prepaid amount if prepayment occurs any time after eighteen (18) months of the Effective Date; or (iii) 0% of the prepaid amount if prepayment is refinanced by another credit facility established by Bank.

"**Prime Rate**" is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Receiver**" is defined in Section 9.1(l).

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any director of Borrower.

"**Restricted License**" is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Bank's right to sell any Collateral.

"**SEC**" shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Subordinated Debt**" is indebtedness incurred by Borrower subordinated to all of Borrower's now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

**"Subordination Agreement"** is each agreement, in form and substance satisfactory to Bank in its sole discretion, evidencing the Subordinated Debt.

"**Subsidiary**" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

"**Term Loan Advance**" and "**Term Loan Advances**" are each defined in Section 2.2(a) hereof.

"**Term Loan Maturity Date**" means April 1, 2023.

"**Trademarks**" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"**Tranche 1 Advance**" is defined in Section 2.2(a).

"**Tranche 2 Advance**" is defined in Section 2.2(a).

"**Tranche 2 Event**" means delivery by Borrower to Bank, after the Effective Date of evidence satisfactory to Bank in its sole and absolute discretion, that Borrower has, on or before end of the Draw Period, achieved revenue of at least Two Million Canadian Dollars ($2,000,000 CDN) for the trailing six (6) month period ending on or before September 30, 2019.

"**Transfer**" is defined in Section 7.1.

"**Warrant**" is that certain Warrant to purchase Class B2 Preferred shares dated as of the Effective Date executed by Borrower in favor of Bank, as amended, modified, supplemented and/or restated from time to time.

**[**Signature page follows.**]**

**IN WITNESS WHEREOF**, this Agreement and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, this Agreement is being executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the Effective Date.

BORROWER:

IS5 COMMUNICATIONS INC.

By____________________________________
Name: CLIVE DIAS
Title: PRESIDENT & CEO

BANK:

SILICON VALLEY BANK

By____________________________________
Name:__________________________________
Title:___________________________________

**IN WITNESS WHEREOF**, this Agreement and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, this Agreement is being executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the Effective Date.

BORROWER:

IS5 COMMUNICATIONS INC.

By____________________________
Name:__________________________
Title:___________________________

BANK:

SILICON VALLEY BANK

By____________________________
Name: Tyler Kirk
Title: Vice President

## EXHIBIT A – COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, guaranteed investment certificates, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

Notwithstanding the foregoing, the following shall be excluded from the Collateral: (a) the last day of the term of any lease or agreement to lease, but Borrower shall stand possessed of such last day in trust for and assign it to such person as Bank shall direct, (b) Borrower's consumer goods, if any, and (c) any contract or agreement, including any restrictive license, to the extent it is not assignable or requires the consent of a third party to its assignment and such consent has not been obtained, provided that until such consent is obtained, Borrower shall hold any such contracts or agreements in trust for and on behalf of Bank.

**EXHIBIT B**

**COMPLIANCE STATEMENT**

TO: SILICON VALLEY BANK Date: ________________________
FROM: iS5 Communications Inc.

Under the terms and conditions of the Loan and Security Agreement between iS5 Communications Inc. ("Borrower") and Bank (the "Agreement"):

Borrower is in complete compliance for the period ending ________________ with all required covenants except as noted below. Attached are the required documents evidencing such compliance, setting forth calculations prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

| **Reporting Covenants** | **Required** | **Complies** |
|---|---|---|
| | | |
| Monthly financial statements with Compliance Statement | Monthly within 30 days | Yes No |
| Annual financial statement (CPA Audited) | FYE within 180 days | Yes No |
| 10-Q, 10-K and 8-K (if applicable) | Within 5 days after filing with SEC | Yes No N/A |
| Board-approved operating budget and projections | FYE within 30 days | Yes No |
| Account Balances | Monthly within 30 days | Yes No |

**Other Matters**

| | | | |
|---|---|---|---|
| 1) | Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Statement. | Yes | No |
| 2) | Has the Tranche 2 Event occurred? If yes, please provide evidence of same to Bank (unless otherwise previously provided). | Yes | No |

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

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# EXHIBIT C – LOAN PAYMENT/ADVANCE REQUEST FORM

**DEADLINE FOR SAME DAY PROCESSING IS NOON EASTERN TIME**

Fax To: Date: ______________________

**LOAN PAYMENT:** IS5 COMMUNICATIONS INC.
From Account #________________________________ (Deposit Account #) To Account #__________________________________________________ (Loan Account #)
Principal $____________________________________ and/or Interest $________________________________________________
Authorized Signature:______________________________ Phone Number: _______________________________________
Print Name/Title: __________________________________

**LOAN ADVANCE:**
Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.
From Account #________________________________ (Loan Account #) To Account #__________________________________________________ (Deposit Account #)
Amount of Advance $___________________________
All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature:______________________________ Phone Number: ______________________________________
Print Name/Title: __________________________________

**OUTGOING WIRE REQUEST:**
**Complete only if all or a portion of funds from the loan advance above is to be wired.**
Deadline for same day processing is noon, Easter Time

Beneficiary Name: ____________________________________ Amount of Wire: $____________________________________________
Beneficiary Bank: ____________________________________ Account Number: ____________________________________________
City and State: _______________________________________
Beneficiary Bank Transit (ABA) #: ______________________ Beneficiary Bank Code (Swift, Sort, Chip, etc.): ______________________
**(For International Wire Only)**
Intermediary Bank: ___________________________________ Transit (ABA) #: _______________________________________________
For Further Credit to: ________________________________________________________________________________________________
Special Instruction: __________________________________________________________________________________________________

*By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).*

Authorized Signature: ____________________________ 2nd Signature (if required): _______________________________________
Print Name/Title: ______________________________ Print Name/Title: _______________________________________________
Telephone #: __________________________________ Telephone #: ___________________________________________________

**EXHIBIT D**

**LEASE STATEMENT**

TO: SILICON VALLEY BANK Date: ________________________
FROM: iS5 Communications Inc.

This Lease Statement is being delivered in accordance with the terms of the Loan and Security Agreement (as amended, the "**Agreement**") between the iS5 Communications Inc. ("**Borrower**") and Silicon Valley Bank ("**Bank**").

Borrower hereby represents and warrants to Bank in connection with the lease between Marshall-Barwick Properties Inc. ("**Landlord**") and Borrower for property located at 5895 Ambler Drive, Mississauga, Ontario L4W 5B7 (hereinafter referred to as the "**Lease**"), that:

1. the Lease has not been altered or amended and is in full force and effect and is valid and subsisting and in good standing as of the date hereof; and

2. no default or event of default or breach has occurred under the Lease and, as of the date hereof, Borrower has not received any verbal or written notice of a default or event of default or breach under the Lease from the Landlord.

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# FIRST AMENDMENT
# TO
# LOAN AND SECURITY AGREEMENT

**THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this "**Amendment**") is entered into this 1st day of February, 2022, by and between **SILICON VALLEY BANK**, an authorized foreign bank under the Bank Act (Canada) ("**Bank**") and **IS5 COMMUNICATIONS INC.**, a corporation organized under the laws of the Province of Ontario ("**Borrower**").

## RECITALS

**A.** Bank and Borrower have entered into that certain Loan and Security Agreement dated as of May 15, 2019 (as the same may from time to time be further amended, modified, supplemented or restated, the "**Loan Agreement**").

**B.** Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

**C.** Borrower has requested that Bank amend the Loan Agreement to (i) extend the 2022 Term Loan (as hereinafter defined) to Borrower; (ii) extend the Revolving Line (as hereinafter defined) to Borrower; and (ii) make certain other revisions to the Loan Agreement, as more fully set forth herein.

**D.** Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

## AGREEMENT

**NOW, THEREFORE,** in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

**2. Amendments to Loan Agreement.**

**2.1 Section 2.2 (Term Loan Advances)**. The Loan Agreement shall be amended by (i) renumbering the provisions of Section 2.2 (Term Loan Advances) thereof to Section 2.2.1 (Term Loan Advances) and (ii) renumbering all existing refences to Section 2.2 to Section 2.2.1.

**2.2 Section 2.2.2** (**2022 Term Loan Advances**). The Loan Agreement shall be amended by inserting the following new provisions to appear as Section 2.2.2 (2022 Term Loan Advances) thereof:

" **2.2.2 2022 Term Loan Advances.**

(a) Availability. Subject to the terms and conditions of this Agreement, upon Borrower's request, during the 2022 Term Loan Draw Period, Bank shall make term loan advances available to Borrower up to an aggregate original principal amount not to exceed Four Hundred Thousand Dollars ($400,000) (each a "**2022 Term Loan Advance**" and collectively the "**2022 Term Loan Advances**"), but only after the occurrence of the 2022

Term Loan Event. After repayment, no 2022 Term Loan Advance (or any portion thereof) may be reborrowed.

(b) Interest Payments. With respect to each 2022 Term Loan Advance, commencing on the first Payment Date following the Funding Date of such 2022 Term Loan Advance and continuing on the Payment Date of each month thereafter, Borrower shall make monthly payments of interest, in arrears, on the principal amount of such 2022 Term Loan Advance at the rate set forth in Section 2.3(a)(ii).

(c) Repayment. 2022 Term Loan Advances shall be "interest only" for the duration of the 2022 Term Loan Draw Period with interest payable in accordance with Section 2.3(d) hereof. Thereafter, 2022 Term Loan Advances shall be payable (i) in eighteen (18) equal monthly installments of principal plus (ii) monthly payments of accrued interest at the rate set forth in Section 0. All outstanding principal and accrued interest with respect to the 2022 Term Loan Advances, as well as all other outstanding Obligations with respect to the 2022 Term Loan Advances, shall be immediately due and payable in full on the 2022 Term Loan Maturity Date

(d) Mandatory Prepayment Upon Acceleration. If a Term Loan Advance is accelerated following the occurrence and during the continuation of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of: (i) all outstanding principal plus accrued and unpaid interest, (ii) the 2022 Term Loan Final Payment, plus (iii) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to any past due amounts.

(e) Permitted Prepayment. Borrower shall have the option to prepay all, but not less than all, of the 2022 Term Loan Advances, provided Borrower (i) delivers written notice to Bank of its election to prepay the 2022 Term Loan Advances at least ten (10) days prior to such prepayment, and (ii) pays, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the 2022 Term Loan Advances, (B) the 2022 Term Loan Final Payment and (C) all other sums, if any, that shall have become due and payable with respect to the 2022 Term Loan Advances, including interest at the Default Rate with respect to any past due amounts.

**2.3 Section 2.2.3** (**Revolving Line Advances**). The Loan Agreement shall be amended by inserting the following new provisions to appear as Section 2.2.3 (Revolving Line Advances) thereof:

" **2.2.3 Revolving Line Advances.**

(a) Availability. Subject to the terms and conditions of this Agreement, upon Borrower's request, Bank shall make Advances available to Borrower, in an amount not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions contained herein.

(b) Interest Payments. With respect to each Advance, commencing on the first Payment Date following the Funding Date of such Revolving Line Advance and continuing on each Payment Date of each month thereafter, Borrower shall make monthly payments of interest, in arrears, on the principal of such Advance at the rate set forth in Section 2.3(a)(iii).

(c) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

(d) Mandatory Repayment. When amounts are outstanding under the Revolving Line, Borrower shall on the earlier of (i) 180 days from the filing date of each Filed Tax Credit and (ii) the date on which Borrower receives the Filed Tax Credit Receivable, repay in full all outstanding amounts owing under the Revolving Line.

(e) Overadvance. If, at any time, the outstanding principal amount of any Advances exceeds the lesser of either the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the "**Overadvance**"). Without limiting Borrower's obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at a per annum rate equal to the rate that is otherwise applicable to Advances plus five percent (5.0%)."

**2.4 Section 2.3** (**Payment of Interest on the Credit Extensions**). Section 2.3(a) of the Loan Agreement (Payment of Interest on the Credit Extensions) is amended by deleting Section 2.3(a) of the Loan Agreement and replacing it with the following:

" (a) Interest Rate.

(i) Term Loan Advance. Subject to Section 2.3(b), the principal amount outstanding for each Term Loan Advance shall accrue interest at a floating per annum rate equal to the greater of (i) three-quarter percentage points (0.75%) above the Prime Rate, and (ii) six and one-quarter percentage points (6.25%), which interest shall be payable monthly in accordance with Section 2.3(d) below.

(ii) 2022 Term Loan Advance. Subject to Section 2.3(b), the principal amount outstanding for each 2022 Term Loan Advance shall accrue interest at a floating per annum rate equal to the greater of (i) two and one-half percentage points (2.50%) above the Prime Rate, and (ii) five and three-quarter percentage points (5.75%), which interest shall be payable monthly in accordance with Section 2.3(d) below.

(ii) Revolving Line Advances. Subject to Section 2.2(b), the principal amount outstanding for each Advance shall accrue interest at a floating per annum rate equal to the greater of (a) one and three-quarter percentage points (1.75%) above the Prime Rate, or (b) five percentage points (5.00%), which interest shall be payable monthly in accordance with Section 2.3(d) below."

**2.5 Section 2.4 (Fees).** Section 2.4 of the Loan Agreement (Fees) is deleted in its entirety and replaced with the following:

"**2.4 Fees.** Borrower shall pay to Bank:

(a) Commitment Fees. A fully earned, non-refundable commitment fee of Seven Thousand Five Hundred Dollars ($7,500.00), on the Effective Date; and, a fully earned, non-refundable commitment fee of Ten Thousand Dollars ($10,000.00), on the First

Amendment Effective Date; and

(b) 2022 Term Loan Final Payment. The 2022 Term Loan Final Payment, when due hereunder, which shall be fully earned and non-refundable as of such date;

(c) Unused Revolving Line Facility Fee. Payable monthly in arrears on the first Payment Date following the First Amendment Effective Date, on the last day of each calendar month occurring thereafter prior to the Revolving Line Maturity Date, and on the Revolving Line Maturity Date, a fee (the "**Unused Revolving Line Facility Fee**") in an amount equal to point one percent (0.10%) per annum of the average unused portion of the Revolving Line, as determined by Bank, computed on the basis of a year with the applicable number of days as set forth in Section 2.3(d). The unused portion of the Revolving Line, for purposes of this calculation, shall be calculated on a calendar year basis and shall equal the difference between (i) the Revolving Line, and (ii) the average for the month of the daily closing balance of the Revolving Line outstanding; and

(d) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

(e) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.4."

**2.6 Section 2.5 (Payments; Application of Payments).** Section 2.5 of the Loan Agreement (Payments; Application of Payments) is here by amended by deleting Section 2.5(c) in its entirety.

**2.7 Section 3.2 (Conditions Precedent to all Credit Extensions).** Section 3.2(a) of the Loan Agreement is deleted in its entirety and replaced with the following:

"(a) timely receipt of (i) the Credit Extension request and any materials and documents required by Section 3.4; (ii) in respect of any 2022 Term Loan Advance, evidence satisfactory to Bank, in its sole discretion that the 2022 Term Loan Event has occurred, (iii) with respect to the request for Term Loan Advances and 2022 Term Loan Advances, an executed Payment/Advance Form and any materials and documents required by Section 3.4.; and (iv) with respect to the initial Advance, a completed Borrowing Base Statement (and any schedules related thereto);"

**2.8 Section 3.4 (Procedures for Borrowing).** Section 3.4 of the Loan Agreement (Procedures for Borrowing) is deleted in its entirety and replaced with the following:

"**3.4 Procedures for Borrowing**.

(a) Revolving Line. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Bank (which notice shall be irrevocable) by electronic mail by 12:00 p.m.

Eastern time on the Funding Date of the Advance. Such notice shall be made by Borrower through Bank's online banking program, provided, however, if Borrower is not utilizing Bank's online banking program, then such notice shall be in a written format acceptable to Bank that is executed by an Authorized Signer. Bank shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances. In connection with any such notification, Borrower must promptly deliver to Bank by electronic mail or through Bank's online banking program such reports and information, including without limitation, sales journals, cash receipts journals, accounts receivable aging reports, as Bank may request in its sole discretion. Bank shall credit proceeds of an Advance to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.

(b) Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan Advance set forth in this Agreement, to obtain a Term Loan Advance, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile or telephone by 12:00 noon Eastern time on the Funding Date of the Term Loan Advance. Bank shall have received satisfactory evidence that the provision of such notices and the requests for Term Loan Advances have been approved by the Board. In connection with such notification, Borrower must promptly deliver to Bank by electronic mail or facsimile a completed Payment/Advance Form executed by an Authorized Signer together with such other reports and information, as Bank may request in its sole discretion. Bank shall credit proceeds of any Term Loan Advance to the Designated Deposit Account. Bank may make Term Loan Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Term Loan Advances are necessary to meet Obligations which have become due.

(c) 2022 Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of a 2022 Term Loan Advance set forth in this Agreement, to obtain a 2022 Term Loan Advance, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile or telephone by 12:00 noon Eastern time on the Funding Date of the 2022 Term Loan Advance. Bank shall have received satisfactory evidence that the provision of such notices and the requests for 2022 Term Loan Advances have been approved by the Board. In connection with such notification, Borrower must promptly deliver to Bank by electronic mail or facsimile a completed Payment/Advance Form executed by an Authorized Signer together with such other reports and information, as Bank may request in its sole discretion. Bank shall credit proceeds of any 2022 Term Loan Advance to the Designated Deposit Account. Bank may make 2022 Term Loan Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the 2022 Term Loan Advances are necessary to meet Obligations which have become due."

**2.9 Section 4 (Grant of Security Interest)**. Section 4.1 of the Loan Agreement (Due Organization, Authorization; Power and Authority) is deleted in its entirety and replaced with the following:

"**4.1 Grant of Security Interest.** Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations of Borrower, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

If the grant of any Lien hereunder in any Contract, or Permit would result in the termination or breach of such Contract, or Permit or is otherwise prohibited or ineffective (whether by the terms thereof or under applicable law), then such Contract, or Permit will not be subject to any Lien hereunder but will be held in trust by Borrower for the benefit of Bank and, on the exercise by Bank of any of its rights or remedies under this Agreement following an Event of Default, will be assigned by Borrower as directed by Bank; provided that: (a) the Liens granted hereunder will attach to such Contract, or Permit, or applicable portion thereof, immediately at such time as the condition causing such termination or breach is remedied, and (b) if a term in a Contract that prohibits or restricts the grant of the Lien hereunder in the whole of an Account or Chattel Paper forming part of the Collateral is unenforceable against Bank under applicable law, then the exclusion from the Lien set out above shall not apply to such Account or Chattel Paper. Notwithstanding the foregoing, if a judicial authority determines that a Lien in Intellectual Property is necessary to have a security interest in Accounts and Proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the date hereof, include Intellectual Property to the extent necessary to permit perfection of Bank's Lien in such Accounts and Proceeds of Intellectual Property. For greater certainty, no ownership interest in Intellectual Property is presently assigned to Bank by sole virtue of the grant of the Liens contained herein. In addition, the Liens granted herein do not attach to Consumer Goods (as defined in the PPSA) or extend to the last day of the term of any lease or agreement for lease of real property. Such last day will be held by Borrower in trust for Bank and, on the exercise by Bank of any of its rights or remedies under this Agreement following an Event of Default, will be assigned by Borrower as directed by Bank.

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at Borrower's sole cost and expense, release its Liens in the Collateral and all rights therein shall revert to Borrower."

**2.10 Section 5 (Representations and Warranties).** Section 5.1 of the Loan Agreement (Due Organization, Authorization; Power and Authority) is deleted in its entirety and replaced with the following:

"**5.1 Due Organization, Authorization; Power and Authority.** Borrower is duly existing and in good standing in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate, entitled "Perfection Certificate" (the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's registered office and mailing address (if different than its chief executive office); (e) the Perfection Certificate accurately sets forth each jurisdiction in which Borrower carries on business or keeps tangible personal property and all jurisdictions in which material account debtors of Borrower are located; (f) other than set out in the Perfection Certificate, Borrower (and each of its predecessors) has not changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

This Agreement and the other Loan Documents have been duly executed and delivered by each Credit Party (as applicable) and constitute legal, valid and binding obligations of each Credit Party (as applicable), enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. Specifically but without limitation, Borrower is able to calculate the yearly rate or percentage of interest payable under any Loan Document based upon the methodology set out in such Section 2.3(d), to the extent it applies to the expression or statement of any interest payable under any Loan Document."

**2.11** **Section 5 (Representations and Warranties)**. Section 5 of the Loan Agreement (Representations and Warranties) is amended by deleting Section 5.5 in its entirety and replacing it with the following:

"**5.5. Solvency.** Borrower is not an "insolvent person" within the meaning of the BIA; and Borrower is able to pay its debts (including trade debts) as they mature."

**2.12** **Section 5 (Representations and Warranties)**. Section 5.8 of the Loan Agreement (Tax Returns and Payments; Pension Contributions) is deleted in its entirety and replaced with the following:

"**5.8 Tax Returns and Payments; Pension Contributions.** Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, provincial, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Five Thousand Dollars ($5,000).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the pension benefit fund established under any other governmental agency. Borrower does not have, sponsor, administer, contribute to, participate in, or assume any liability (including any contingent liability) under any Defined Benefit Plan."

**2.13 Section 5 (Representations and Warranties)**. Section 5 of the Loan Agreement (Representations and Warranties) is amended by (i) re-numbering Section 5.11 of the Loan Agreement (Definition of "Knowledge") as Section 5.12, and (ii) inserting the following new Section 5.11:

"**5.11 Tax Credits**. Bank has been granted or will be granted a first priority security interest under the laws of the Province of Ontario, on all claims, receivables and on all Accrued Tax Credits and Filed Tax Credits, present and future, of Borrower, which security interest shall have been registered under the PPSA."

**2.14 Section 6.2 (Financial Statements, Reports, Certificates).** Section 6.2(i) of the Loan Agreement (Financial Statements, Reports, Certificates) is deleted in its entirety and replaced with the following:

"(i) Securities Filings. In the event that Borrower becomes subject to the reporting requirements under the *Securities Act* (Ontario) within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with any securities commission, securities exchange, stock exchange or similar entity, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with any securities commission, securities exchange, stock exchange or similar entity) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents."

**2.15 Section 6.2 (Financial Statements, Reports, Certificates).** Section 6.2 of the Loan Agreement (Financial Statements, Reports, Certificates) is amended by (i) deleting the "and" appearing at the end of subsection (k), (ii) re-lettering subsection (l) as subsection (n) and (iii) inserting the following new subsections (l) and (m):

> "(l) Borrowing Base Statement. Within thirty (30) days after the last day of each month, (i) a Borrowing Base Statement (and any schedules related thereto), including a detailed listings of all Accrued Tax Credits and Filed Tax Credits (including a column showing conversion of the same from Canadian Dollars to Dollars);
>
> (m) Reports. Within thirty (30) days after the end of each month, (ii) a detailed report setting out software as a service (SaaS) metrics reasonably requested by Bank and in a format to be mutually agreed upon by Borrower and Bank; and (ii) a detailed report setting out key performance indicators (KPI) metrics reasonably requested by Bank and in a format to be mutually agreed upon by Borrower and Bank; and"

**2.16** Section 6.6 (Operating Accounts). Section 6.6(a) of the Loan Agreement (Operating Accounts) is deleted in its entirety and replaced with the following:

> "(a) Borrower may maintain its existing operating and other deposit accounts located in Canada with Royal Bank of Canada, as described in the Perfection Certificate (collectively, the "**Canadian Accounts**")."

**2.17 Section 6 (Affirmative Covenants)**. Section 6 of the Loan Agreement (Affirmative Covenants) is amended by (i) re-numbering Section 6.11 of the Loan Agreement (Further Assurances") as Section 6.14 and (ii) inserting the following new Sections 6.11, 6.12, 6.13 and 6.14:

> "**6.11 Collections.** Whether or not an Event of Default has occurred and is continuing, at all times when amounts are outstanding under the Revolving Line, Borrower shall immediately apply all payments on and proceeds of each Filed Tax Credit Receivable to repay all outstanding amounts under the Revolving Line.
>
> **6.12 Remittance of Proceeds**. Except as otherwise provided in Section 6.11, deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 6.11 hereof, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale (i) of Inventory in the ordinary course of business or (ii) of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of Twenty Five Thousand Dollars ($25,000) or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this Section 6.12 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.
>
> **6.13 Online Banking.**

(a) Utilize Bank's online banking platform for all matters requested by Bank which shall include, without limitation (and without request by Bank for the following matters), uploading information pertaining to Accounts and Account Debtors, requesting approval for exceptions, requesting Credit Extensions, and uploading financial statements and other reports required to be delivered by this Agreement (including, without limitation, those described in Section 6.2 of this Agreement).

(b) Comply with the terms of Bank's Online Banking Agreement as in effect from time to time and ensure that all persons utilizing Bank's online banking platform are duly authorized to do so by an Administrator. Bank shall be entitled to assume the authenticity, accuracy and completeness on any information, instruction or request for a Credit Extension submitted via Bank's online banking platform and to further assume that any submissions or requests made via Bank's online banking platform have been duly authorized by an Administrator.

**6.14 Account Debtors.** Provide written notice to Bank of any new jurisdictions where an account debtor owing more than Two Hundred Fifty Thousand Dollars ($250,000.00) to Borrower, whose receivable is more than thirty (30) days overdue beyond the agreed term, is located."

**2.18 Section 7.2 (Changes in Business, Management, Ownership/Control or Business Locations).** Section 7.2 (of the Loan Agreement (Changes in Business, Management, Ownership/Control or Business Locations) is deleted in its entirety and replaced with the following:

"**7.2 Changes in Business, Management, Control, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) fail to provide notice to Bank of any Key Persons departing from or ceasing to be employed by Borrower within five (5) days after their departure from Borrower; or (d) enter into any transaction or series of related transactions in which the shareholders of Borrower who were not shareholders immediately prior to the first such transaction own more than forty percent (40.0%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction).

Borrower shall not, without at least fifteen (15) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars ($250,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, chief executive office, registered office, head office or domicile, (3) change its organizational structure or type, (4) change its legal name, (5) add any new jurisdiction(s) in which it carries on business and keeps tangible personal property, , or (6) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to add any new offices or business locations, including warehouses, containing in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) of Borrower's assets or property, then

Borrower will first receive the written consent of Bank, and the landlord of any such new offices or business locations, including warehouses, shall execute and deliver a landlord consent in form and substance satisfactory to Bank. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank. Borrower shall not effect or permit any of the above-mentioned changes unless all filings have been made and all other actions taken that are required in order for Bank to continue at all times following such change to have a valid and perfected first priority Lien with respect to all of the Collateral."

**2.19 Section 7.10 (Compliance).** The Loan Agreement shall be amended by inserting the following new provisions to appear as Section 7.10 (Compliance) thereof:

"**7.10 Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Employment Standards Act (2000) (Ontario) or violate any other law or regulation, if the failure to comply or violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of Borrower, including any liability to any pension benefit fund established by any other governmental agency. Borrower shall not establish, sponsor, administer, contribute to, participate in, or assume any liability (including any contingent liability) under any Defined Benefit Plan."

**2.20 Section 7.11 (Use of Proceeds).** The Loan Agreement shall be amended by inserting the following new provisions to appear as Section 7.11 (Use of Proceeds) thereof:

"**7.11 Use of Proceeds.** Borrower will not request any Credit Extension, and Borrower shall not use, and shall procure that each other Credit Party and its and their respective directors, officers, employees and Relevant Agents shall not use, the proceeds of any Credit Extension:

(a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws;

(b) for the purpose of funding, financing or facilitating any prohibited activities, business or transaction of or with any Sanctioned Person; or

(c) in any other manner that would result in the violation of any Sanctions."

**2.21** **Section 8.1** (**Payment Default**). Section 8.1 of the Loan Agreement (Payment Default) is deleted in its entirety and replaced with the following:

> " **Payment Default**. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Term Loan Maturity Date, 2022 Term Loan Maturity Date or the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default but no Credit Extension will be made during the cure period."

**2.22** **Section 8.2 (Covenant Default)**. Section 8.2(a) of the Loan Agreement is deleted in its entirety and replaced with the following:

> "(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.3, 6.5, 6.6, 6.7, 6.9, 6.10, 6.11 or 6.12 or violates any covenant in Section 7; or"

**2.23** **Section 8.5 (Insolvency).** Section 8.5 of the Loan Agreement (Insolvency) is deleted in its entirety and replaced with the following:

"**8.5 Insolvency.**

(a) Borrower or any of its Subsidiaries:

(i) admits in writing that it is insolvent or unable to pay its debts as they generally become due;

(ii) commits an act of bankruptcy under the United States Bankruptcy Code or the BIA, files a voluntary assignment in bankruptcy under the United States Bankruptcy Code or the BIA, makes a proposal (or files a notice of its intention to do so) under the United States Bankruptcy Code or the BIA or seeks any other relief in respect of itself under the United States Bankruptcy Code or the BIA;

(iii) institutes any proceedings seeking relief in respect of itself under the CCAA;

(iv) institutes any proceeding seeking relief in respect of itself under the WURA;

(v) in addition to the forgoing, institutes any other proceeding seeking: (a) to adjudicate itself an insolvent person or a bankrupt; (b) to liquidate, dissolve or wind-up its business or assets; (c) to compromise, arrange, adjust or declare a moratorium in respect of the payment of, its debts; (d) to stay the rights of creditors generally (or any class of creditors); (e) any other relief in respect of itself under any federal, provincial or foreign applicable law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, receivership, restructuring of business, assets or debt, reorganization of business, assets or debt or protection of debtors from their creditors (such applicable law includes any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt); or (f) any other relief which provides for plans or schemes of reorganization, plans or schemes of arrangement or plans or schemes of compromise, in respect of itself, to be submitted or presented to creditors (or any class of creditors);

(vi) applies for the appointment of, or has a Receiver (either court or privately appointed), sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official appointed in respect of it, or any substantial part of its property; or

(vii) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 8.5;

(b) any petition is filed, application made or other proceeding instituted against or in respect of Borrower or any of its Subsidiaries:

(i) seeking to adjudicate it an insolvent person;

(ii) seeking a bankruptcy order against it under the United States Bankruptcy Code or the BIA;

(iii) seeking to institute proceedings against it under the CCAA;

(iv) seeking to institute proceedings against it under the WURA;

(v) seeking, in addition to the forgoing: (a) to adjudicate it an insolvent person or a bankrupt; (b) to liquidate, dissolve or wind-up its business or assets; (c) to compromise, arrange, adjust or declare a moratorium in respect of the payment of, its debts; (d) to stay the rights of creditors generally (or any class of creditors); (e) any other relief in respect of it under any federal, provincial or foreign applicable law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, receivership, restructuring of business, assets or debt, reorganization of business, assets or debt, or protection of debtors from their creditors (such applicable law includes any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt); or (f) any other relief which provides plans or schemes of reorganization, plans or schemes of arrangement or plans or schemes of compromise in respect of it, to be submitted or presented to creditors (or any class of creditors); or

(vi) seeking the issuance of an order for the appointment of a Receiver, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official in respect of it or any substantial part of its property,

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of 30 days after the institution thereof, provided that: (a) if Borrower or any of its Subsidiaries fails to contest such petition, application or proceeding the 30 day grace period shall cease to apply; (b) if an order, decree or judgment is issued (whether or not entered or subject to appeal) against Borrower or any of its Subsidiaries thereunder within the 30 day period, such grace period will cease to apply, (c) Borrower or any of its Subsidiaries files an answer or other responding materials admitting the material allegations of a petition, application or other proceeding filed against it, such grace period will cease to apply; and (d) no Credit Extensions will be made during such 30-day period.

**2.24 Section 10 (Notices).** Section 10 of the Loan Agreement (Notices) is deleted in its entirety and replaced with the following:

**"10 <u>NOTICES</u>**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in Canada Post, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:
iS5 Communications Inc.
5895 Ambler Drive
Mississauga, Ontario, L4W 5B7
Attn: Clive Dias
Email: CliveDias@is5com.com

with a copy to:
Attn: Maurizio Milani
Email: mauriziomilani@is5com.com

with a copy to:
Fasken Martineau DuMoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, Ontario K1P 6L5
Attn: Julia Kennedy
Email: jkennedy@fasken.com

If to Bank:
Silicon Valley Bank
161 Bay Street, Suite 4410
Toronto, Ontario
Canada M5J 2S1
Attn: Karim Mashnuk
Email: kmashnuk@svb.com

with a copy to:
Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9
Attn: Tony Gioia
Email: tgioia@airdberlis.com "

**2.25 Section 11 (Choice of Law, Venue, Jury Trail Waiver and Judicial reference).** Section 11 of the Loan Agreement (Choice of Law, Venue, Jury Trail Waiver and Judicial reference) is deleted in its entirety and replaced with the following:

"**11 <u>CHOICE OF LAW, VENUE</u>**

This Agreement and the other Loan Documents shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as an Ontario contract. Each party hereto agrees (a) that any action or proceeding relating to this Agreement shall be brought in any court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably and unconditionally attorns and submits to the exclusive jurisdiction of such Ontario court, (b) that it irrevocably waives any right to, and shall not, oppose any such Ontario action or proceeding on any jurisdictional basis, including forum non conveniens, and (c) not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this Section 11. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) Business Days after deposit in Canada Post, proper postage prepaid."

**2.26 Section 12.1 (Termination Prior to Term Loan Maturity Date)**. Section 12.1 of the Loan Agreement (Termination Prior to Term Loan Maturity Date) is deleted in its entirety and replaced with the following:

"**Termination Prior to Term Loan Maturity Date, 2022 Term Loan Maturity Date or the Revolving Line Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Term Loan Maturity Date, 2022 Term Loan Maturity Date or Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination."

**2.27 Section 12.2 (Successors and Assigns)**. Section 12.2 of the Loan Agreement (Successors and Assigns) is deleted in its entirety and replaced with the following:

"**12.2 Successors and Assigns**. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrant and the 2022 Warrant, as to which assignment, transfer and other such actions are governed by the terms thereof)."

**2.28 Section 12.16 (Anti-Money Laundering Legislation).** The Loan Agreement shall be amended by inserting the following new provisions to appear as Section 12.16 (Anti-Money Laundering Legislation) thereof:

"**12.16 Anti-Money Laundering Legislation.** Borrower acknowledges that, pursuant to AML Legislation, Bank may be required to obtain, verify and record information regarding Borrower, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of Borrower, and the transactions contemplated hereby. Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by Bank, or any prospective assignee or participant in order to comply with any applicable AML Legislation, whether now or hereafter in existence."

**2.29 Section 12.17 (Quebec Matters).** The Loan Agreement shall be amended by inserting the following new provisions to appear as Section 12.17 (Quebec Matters) thereof;

"**12.17 Québec Matters.** For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall include "movable property", (b) "real property" or "real estate" shall include "immovable property", (c) "tangible property" shall include "corporeal property", (d) "intangible property" shall include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" , "reservation of ownership" and a resolutory clause, (f) all references to filing, perfection, priority, remedies, registering or recording under the Uniform Commercial Code or a Personal Property Security Act shall include publication under the *Civil Code of Québec,* (g) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" hypothec as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (i) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall include a "mandatary", (k) "construction liens" or "mechanics, materialmen, repairmen, construction contractors or other like Liens" shall include "legal hypothecs" and "legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable", (l) "joint and several" shall include "solidary", (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault", (n) "beneficial ownership" shall include "ownership on behalf of another as mandatary", (o) "easement" shall include "servitude", (p) "priority" shall include "rank" or "prior claim", as applicable (q) "survey" shall include "certificate of location and plan", (r) "state" shall include "province", (s) "fee simple title" shall include "absolute ownership" and "ownership" (including ownership under a right of superficies), (t) "accounts" shall include "claims", (u) "legal title" shall be including "holding title on behalf of an owner as mandatory or prete-nom", (v) "ground lease" shall include "emphyteusis" or a "lease with a right of superficies, as applicable, (w) "leasehold interest" shall include a "valid lease", (x) "lease" shall include a "leasing contract" and (y) "guarantee" and "guarantor" shall include "suretyship" and "surety", respectively. The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement*. »

**2.30** **Section 13** (**Definitions**). The following terms and their respective definitions set forth in Section 13.1 of the Loan Agreement (Definitions) are deleted in their entirety and replaced with the followings:

"**Business Day**" means any day that is not (a) a Saturday, Sunday or holiday (as defined in the *Interpretation Act* (Canada)) in Toronto, Ontario, or (b) in the case of any Advance, any other statutory holiday in New York, New York.

"**Credit Extension**" is any Term Loan Advance, 2022 Term Loan Advance, Advance, Overadvance or any other extension of credit by Bank for Borrower's benefit.

"**Designated Deposit Account**" is the deposit account maintained by Borrower with Bank in the United States of America as designated by Borrower and agreed to by Bank from time to time and may include an account maintained by Borrower with Bank, currently account no. 3302 643654.

"**Obligations**" are Borrower's obligations to pay when due any debts, principal, interest, fees, Bank Expenses, the 2022 Term Loan Final Payment, the Unused Revolving Line Facility Fee and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents (other than the Warrant and 2022 Warrant), or otherwise, including, without limitation, all obligations relating to Bank Services and any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents (other than the Warrant and 2022 Warrant).

"**Payment Date**" is (a) with respect to Term Loan Advances and 2022 Term Loan Advances, the first (1st) calendar day of each month and (b) with respect to Advances, the last calendar day of each month.

"**PPSA**" is the *Personal Property Security Act* (Ontario), as such legislation may be amended, renamed or replaced from time to time, and includes all regulations from time to time made under such legislation; provided, that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Personal Property Security Act in effect in a jurisdiction other than the Province of Ontario, the term "**PPSA**" shall mean the *Personal Property Security Act* or equivalent personal property security legislation as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions."

**2.31** **Section 13** (**Definitions**). The Loan Agreement is amended by inserting the following new definitions to appear alphabetically in Section 13.1 thereof:

"**2022 Warrant**" is that certain Warrant to purchase Common Shares in the capital of Borrower dated as of the First Amendment Effective Date executed by Borrower in favor of Bank, as amended, modified, supplemented and/or restated from time to time.

"**2022 Term Loan Advance**" and "**2022 Term Loan Advances**" are each defined in Section 2.2.2(a).

"**2022 Term Loan Draw Period**" is the period of time commencing upon the occurrence of the First Amendment Effective Date and continuing through the earlier to occur of (a) April 30, 2022 or (b) an Event of Default

"**2022 Term Loan Event**" means at any time during the 2022 Term Loan Draw Period, delivery by Borrower to Bank of evidence satisfactory to Bank in its sole and absolute discretion of Borrower entering into an Equity Term Sheet.

"**2022 Term Loan Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Term Loan Maturity Date, (b) the repayment of the Term Loan Advances in full, (c) as required pursuant to Section 2.2.2(d) or 2.2.2(e), or (d) the termination of this Agreement, in an amount equal to the sum of (i) Eight Thousand Dollars ($8,000), plus (ii) three percent (3%) of the original aggregate principal amount of all 2022 Term Loan Advances advanced to Borrower.

"**2022 Term Loan Maturity Date**" is October 1, 2023.

"**Accrued Tax Credits**" means Borrower's accrued (but not yet filed) Federal Tax Credits and Provincial Tax Credits.

"**Advance**" or "**Advances**" means a revolving credit loan (or revolving credit loans) under the Revolving Line.

"**AML Legislation**" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" applicable laws, whether within Canada or elsewhere, including any regulations, guidelines or orders thereunder.

"**Availability Amount**" is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base, *minus* (b) the outstanding principal balance of all Advances.

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada).

"**Borrowing Base**" is an amount equal to, without duplication, (a) eighty percent (80%) of Filed Tax Credits, *plus* (b) fifty percent (50%) of Accrued Tax Credits, all as determined by Bank from Borrower's most recent Borrowing Base Statement; provided, that Bank has the right to decrease the foregoing percentages in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect or otherwise impair the Collateral or Bank's ability to realize the value thereof, all as determined by Bank based upon information received by Bank.

"**Borrowing Base Statement**" is that certain report of the value of certain Collateral in the form specified by Bank to Borrower from time to time.

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).

"**Credit Party**" means Borrower and each of its Subsidiaries, if any.

"**Defined Benefit Plan**" means a pension plan registered under the *Income Tax Act* (Canada), the *Pension Benefits Act* (Ontario) or any other applicable pension standards legislation which contains a "defined benefit provision", as such term is defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

"**Equity Term Sheet**" means a term sheet with respect to an equity financing of Borrower for not less than Ten Million Dollars ($10,000,000) of net cash proceeds to be received by Borrower from the sale or issuance of Borrower's equity securities on terms and with a lead investor or lead investors, acceptable to Bank in its sole discretion, that is entered into on or before February 28, 2022; provided that such Ten Million Dollars ($10,000,000) of net cash proceeds from the sale or issuance of Borrower's equity securities, shall exclude any and all proceeds received by Borrower with respect to the sale and issuance by Borrower of equity securities of Borrower prior to the execution of the Equity Term Sheet, including without limitation proceeds received by Borrower with respect to any convertible securities of Borrower, including without limitation proceeds from any convertible promissory notes issued by Borrower and proceeds from any simple agreements for future equity (SAFEs) issued by Borrower.

"**Federal Tax Credits**" means investment tax credits earned or arising under the Scientific Research and Experimental Development Tax Incentive Program, in effect from time to time, as administered by the Canada Revenue Agency and any applicable provincial taxing authority, which are earned by and owing to Borrower by Her Majesty the Queen in right of Canada properly claimed or to be claimed by Borrower in its annual federal corporate tax return (such return to be filed within one hundred eighty (180) days of Borrower's fiscal year end) and certified as such by Borrower's auditor or consultant and that are acceptable to Bank in all respects.

"**Filed Tax Credits**" are Borrower's filed Federal Tax Credits and Provincial Tax Credits supported by a copy of the filed application (together with all supporting documentation) for such tax credit.

"**Filed Tax Credit Receivable**" means the proceeds received by Borrower from the applicable Governmental Authority in respect of the Filed Tax Credits.

"**First Amendment Effective Date**" is February 1, 2022.

"**Overadvance**" is defined in 2.2.2(e).

"**Provincial Tax Credits**" means investment tax credits earned or arising under the Scientific Research and Experimental Development Tax Incentive Program, in effect from time to time, as administered by the Canada Revenue Agency and any applicable provincial taxing authority, which are earned by and owing to Borrower by the Province of British Columbia properly claimed or to be claimed by Borrower in its annual provincial corporate tax return (such return to be filed within one hundred eighty (180) days of Borrower's fiscal year end) and certified as such by Borrower's auditor or consultant and that are acceptable to Bank in all respects.

"**Relevant Agent**" means, with respect to a Credit Party, any agent of such Credit Party that will act in any capacity in connection with, or benefit from, the Credit Extensions.

"**Revolving Line**" is an aggregate principal amount equal to Six Hundred Thousand Dollars ($600,000).

"**Revolving Line Maturity Date**" is October 31, 2022.

"**Unused Revolving Line Facility Fee**" is defined in Section 2.4(c).

"**WURA**" means *Winding Up and Restructuring Act* (Canada).

**2.32 Section 13** (**Definitions**). The Loan Agreement is amended by deleting the following term and its definition from Section 13.1 thereof:

"**Code**" is (a) with respect to any assets located in the United States, the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the Commonwealth of Massachusetts; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the Commonwealth of Massachusetts, the term "**Code**" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions, and (b) with respect to any assets located in Canada, the PPSA as amended and as may be further amended and in effect from time to time; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Personal Property Security Act or equivalent legislation in effect in a provincial jurisdiction other than Ontario, the term "Code" shall mean the Personal Property Security Act or equivalent legislation as enacted and in effect in such other province solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**2.33 Exhibit A (Collateral).** The Collateral Description appearing as Exhibit A to the Loan Agreement is deleted in its entirety and replaced with the Collateral Description appearing as <u>Schedule 1</u> hereto.

**2.34 Exhibit B (Compliance Certificate).** The Compliance Statement appearing as <u>Exhibit B</u> to the Loan Agreement is deleted in its entirety and replaced with the form of Compliance Statement attached as <u>Schedule 2</u> hereto:

**2.35 General Amendment**. Each reference to "Code" in the Loan Agreement is deleted and replaced with "PPSA".

**3. Limitation of Amendments.**

**3.1** The amendments set forth in Section 2 above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

**3.2** This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect. For greater certainty, this Amendment shall not be deemed to constitute novation of the obligation arising under the Loan Agreement and the other Loan Documents.

**4. Acknowledgement**. Borrower hereby acknowledges and confirms that from and after the Fifth Amendment Effective Date, Bank under the Loan Agreement and the other Loan Documents is Silicon Valley Bank operating through its Canadian branch, which is an authorized foreign bank branch under the *Bank Act* (Canada), with offices located at 161 Bay Street, Suite 4410, Toronto, Ontario M5J 2S1

**5. Representations and Warranties.** To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

**5.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

**5.2** Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

**5.3** The organizational documents of Borrower delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

**5.4** The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business; and

**5.5** This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**6.** **Perfection Certificate**. Borrower has delivered an updated Perfection Certificate in connection with this Amendment dated as of the date hereof (the "**Updated Perfection Certificate**"), which Updated Perfection Certificate shall supersede in all respects that certain Perfection Certificate by Borrower dated as of May 14, 2019.

**7.** **Integration**. This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

**8.** **Counterparts**. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**9.** **Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document, including this Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, the *Electronic Commerce Act, 2000* (Ontario).

**10.** **Governing Law**. The provisions of Section 11 of the Loan Agreement (as amended by this Agreement) apply to this Agreement.

**11.** **Effectiveness**. This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by Borrower; (b) the due execution and delivery to Bank of the 2022 Warrant by Borrower, (c) Borrower's payment to Bank of a $10,000 commitment fee payable on the First Amendment Effective Date and Bank's documented legal fees and expenses incurred in connection with this Agreement; (d) delivery to Bank of a certificate of an officer including authorizing resolutions and consents of the directors and shareholders; (e) the Updated Perfection Certificate, duly executed by Borrower; (f) evidence that Borrower maintains insurance coverage pursuant to the Loan Agreement; (g) delivery to Bank of a legal opinion of Borrower's Ontario counsel dated as of the First Amendment Effective Date; and (h) such other documents as Bank may reasonably request.

[Signature page follows.]

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed as of the date first written above.

BORROWER:

**IS5 COMMUNICATIONS INC.**

By Maurizio Milani
Name: Maurizio Milani
Title: Chief Financial Officer

BANK:

**SILICON VALLEY BANK**

By Karim Mashnuk
Name: Karim Mashnuk
Title: Vice President

## Schedule 1
## EXHIBIT A – Collateral Description

1. “**Collateral**” means all of the present and future:

   (a) undertakings;

   (b) interests; and

   (c) Personal Property;

of Borrower, including Books and Records, Contracts and Permits, and including all such property in which Borrower now or in the future has any right, title or interest whatsoever, whether owned, leased, licensed, possessed or otherwise held by Borrower, and all Proceeds of any of the foregoing, wherever located.

2. Capitalized terms used but not otherwise defined in this Exhibit A shall have the meanings given to them in the Loan Agreement, and the following terms have the following meanings:

“**Accessions**”, “**Chattel Paper**”, “**Document of Title**”, “**Equipment**”, “**Goods**”, “**Instrument**”, “**Intangible**”, “**Inventory**”, “**Investment Property**”, and “**Money**” have the meanings given to them in the PPSA.

“**Books and Records**” means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the undertakings, interests and Personal Property of Borrower which are at any time owned by Borrower or to which Borrower (or any Person on Borrower’s behalf) has access.

“**Personal Property**” means personal property and includes Accounts (including all present and future tax credits, tax refunds and other sums of a similar nature due to Borrower by any fiscal authority), Chattel Paper, Documents of Title, Equipment, Goods, Instruments, Intangibles, Inventory, Investment Property and Money and includes all Accessions to any of the foregoing; notwithstanding the foregoing, Personal Property shall not include any Intellectual Property provided, however, Personal Property shall include all Accounts and Proceeds of Intellectual Property).

**Schedule 2**
**EXHIBIT B**

## COMPLIANCE STATEMENT

TO: SILICON VALLEY BANK Date: ________________________
FROM: iS5 Communications Inc.

Under the terms and conditions of the Loan and Security Agreement between iS5 Communications Inc. ("**Borrower**") and Bank (the "Agreement"):

Borrower is in complete compliance for the period ending _______________ with all required covenants except as noted below. Attached are the required documents evidencing such compliance, setting forth calculations prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

| Reporting Covenants | Required | Complies |
|---|---|---|
| | | |
| Monthly financial statements with Compliance Statement | Monthly within 30 days | Yes No |
| Annual financial statement (CPA Audited) | FYE within 180 days | Yes No |
| Board-approved operating budget and projections | FYE within 30 days | Yes No |
| Saas/KPI Report, | Within 30 days after the end of each montl | Yes No |
| Borrowing Base Statement | Within 30 days after the end of each montl | Yes No |

| Account Balances | | | | |
|---|---|---|---|---|
| | | | | |
| **Financial Institution** | **Country** | **Denomination** | **Amount** | **mm/dd/yyyy** |
| | | | | |
| | | | | |
| | | | | |

**Other Matters**

| | | | |
|---|---|---|---|
| 1) | Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Statement. | Yes | No |
| 2) | Has the 2022 Term Loan Event occurred, If yes, please provide evidence of same to Bank (unless otherwise previously provided). | Yes | No |

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

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This is Exhibit “F” referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

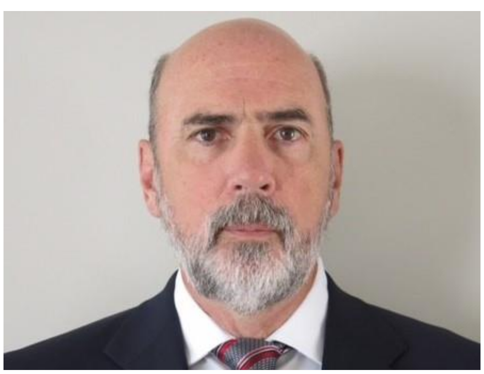
# About

A seasoned senior executive with a track record spanning nearly three decades of success with particular expertise in managing the finance and operations of special situations and venture capital backed enterprises.

Successfully completed complex transactions including mergers, acquisitions, cross-border business arrangements and international business agreements and has held a variety of C -suite roles ranging from Executive Vice President and CEO at a variety of leading firms including G.A. Finance, RCA Corporation, General Electric, Thomson SA, and Newcourt Credit Group.

A successful entrepreneur in his own right, John is the founder and president of Bayfield Capital Group, a specialized corporate finance advisory firm providing capital and expertise in areas of mergers, acquisitions, asset-based lending solutions, capital acquisition and other growth strategies which may take advantage of non-traditional or equity financing. John sits on several Boards of both public and private corporations and is active in local and community non-profit organizations.

He is the Chairman of the Board of Quarterhill Inc. a publicly traded holding company with operating businesses in the patent licencing industry and intelligent transportation systems (ITS) industry. He was the Chief Executive Officer of Coreworx Inc. from February 2017 to October 2018, a member of the board of GuestLogix Inc. from March 2015 to September 2016, and its interim Chief Executive Officer from September 2015 to September 2016. From March 2012 to December 2014, Mr. Gillberry was the Executive Vice-President and Chief Financial Officer of eSentire Inc. He holds a Masters Degree in Business Administration from the Ivey School of Business, University of Western Ontario.



This is Exhibit "G" referred to in the Affidavit of Clive Dias sworn by Clive Dias at the City of Brampton, in the Province of Ontario, before me on August 26, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

D4B02C66537243D...

A Commissioner for taking Affidavits

**iS5 Communications Inc.**
**13 Week Cash Flow Projection**
**As at August 26, 2022**

| *Week Ended* | 12-Aug-22 | | | 19-Aug-22 | | | 26-Aug-22 | 2-Sep-22 | 9-Sep-22 | 16-Sep-22 | 23-Sep-22 | 30-Sep-22 | 7-Oct-22 | 14-Oct-22 | 21-Oct-22 | 28-Oct-22 | 4-Nov-22 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Budget** | **Actual** | **Variance** | **Budget** | **Actual** | **Variance** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** | **Budget** |
| **Cash Receipts (USD)** | | | | | | | | | | | | | | | | | |
| Collections | 117,399 | 69,888 | (47,511) | 19,440 | 84,159 | 64,719 | 50,307 | 155,053 | 49,525 | 21,404 | 82,406 | 53,371 | 7,910 | 13,184 | 266,225 | 82,487 | 82,227 |
| HST | - | - | - | - | - | - | - | - | 15,000 | - | - | - | - | 15,000 | - | - | - |
| SR&ED / Misc | - | - | - | - | 977,581 | 977,581 | - | - | - | - | - | - | - | - | - | - | - |
| **Total Cash Receipts** | 117,399 | 69,888 | (47,511) | 19,440 | 1,061,740 | 1,042,300 | 50,307 | 155,053 | 64,525 | 21,404 | 82,406 | 53,371 | 7,910 | 28,184 | 266,225 | 82,487 | 82,227 |
| **Cash Disbursements (USD)** | | | | | | | | | | | | | | | | | |
| Operational | | | | | | | | | | | | | | | | | |
| Trade Payables | (200,000) | (2,156) | 197,844 | (100,000) | (71,502) | 28,498 | (35,000) | (79,000) | (42,000) | (18,000) | (22,000) | (18,000) | (43,000) | (20,000) | (48,000) | (18,000) | (48,000) |
| Credit Cards and Employee Exper | - | (1,699) | (1,699) | (3,000) | (4,384) | (1,384) | - | (15,000) | - | - | (3,000) | - | (15,000) | - | (3,000) | - | (5,000) |
| Channel Partner Commissions | - | - | - | (6,000) | - | 6,000 | - | - | - | - | (6,000) | - | - | - | (6,000) | - | - |
| Consultants | (5,000) | - | 5,000 | - | - | - | (11,906) | - | (8,000) | - | - | (8,000) | - | - | - | - | (8,000) |
| Rent | - | - | - | - | - | - | - | (19,637) | - | - | - | (19,637) | - | - | - | - | (19,637) |
| Utilities | - | - | - | - | - | - | (1,912) | (3,498) | - | - | (966) | - | (4,991) | - | (419) | - | (4,991) |
| Bank Charges | - | (2) | (2) | - | - | - | (1,093) | - | - | - | - | (1,093) | - | - | - | - | - |
| Office/Communication | - | - | - | (1,686) | - | 1,686 | (121) | (1,953) | - | - | (1,686) | - | (2,074) | - | (1,686) | - | (2,074) |
| Independent Director | - | - | - | - | - | - | - | (13,672) | - | - | - | (13,672) | - | - | - | - | - |
| IT Systems/Software Subscription | (102) | - | 102 | (6,563) | - | 6,563 | - | (9,889) | (1,102) | - | - | - | (10,889) | (102) | - | - | (10,889) |
| Payroll | | | | | | | | | | | | | | | | | |
| Benefits | - | - | - | (50) | - | 50 | (15,438) | (4,530) | - | - | (50) | (15,438) | - | - | - | (15,438) | (4,530) |
| Payroll Canada | (94,938) | - | 94,938 | (109,375) | (180,554) | (71,179) | - | (109,375) | - | (109,375) | - | (109,375) | - | (109,375) | - | (109,375) | - |
| Payroll US | - | - | - | (15,000) | (20,652) | (5,652) | - | (10,000) | - | (15,000) | - | (10,000) | - | (15,000) | - | (10,000) | (10,000) |
| Payroll International | - | - | - | - | - | - | - | (10,000) | - | - | - | (10,000) | - | - | - | - | - |
| Restructuring Fees | | | | | | | | | | | | | | | | | |
| Trustee Fees | - | - | - | (25,000) | (22,379) | 2,621 | - | - | - | (25,000) | - | - | - | - | (15,000) | - | - |
| Legal Counsel Fees | - | - | - | - | - | - | - | - | - | (50,000) | - | - | - | - | (15,000) | - | - |
| Payment to SVB | - | - | - | - | - | - | - | - | (209,667) | - | - | - | - | - | - | - | - |
| **Total Cash Disbursements** | (300,039) | (3,857) | 296,182 | (266,675) | (299,471) | (32,797) | (65,469) | (276,554) | (260,768) | (217,375) | (33,702) | (205,215) | (75,954) | (144,477) | (89,105) | (152,813) | (113,121) |
| **Net Cash Flow** | (182,640) | 66,031 | 248,671 | (247,234) | 762,269 | 1,009,503 | (15,162) | (121,501) | (196,244) | (195,971) | 48,704 | (151,843) | (68,044) | (116,293) | 177,119 | (70,326) | (30,894) |
| Opening Cash (USD) | 109,718 | 204,175 | 94,457 | 527,078 | 870,206 | 343,129 | 1,632,475 | 1,617,313 | 1,495,811 | 1,299,568 | 1,103,597 | 1,152,300 | 1,000,457 | 932,413 | 816,121 | 993,240 | 922,914 |
| Debtor in Possession Financing (USD) | 600,000 | 600,000 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| **Closing Cash (USD)** | **527,078** | **870,206** | **343,129** | **279,843** | **1,632,475** | **1,352,632** | **1,617,313** | **1,495,811** | **1,299,568** | **1,103,597** | **1,152,300** | **1,000,457** | **932,413** | **816,121** | **993,240** | **922,914** | **892,020** |

**Disclaimers:**

1. This statement of projected cash flow of iS5 Communications Inc. (the "**Company**") is prepared by the debtor in accordance with s.50(6)(a) of the *Bankruptcy and Insolvency Act* and should be read in conjunction with the Trustee's Report on Cash Flow Statement and the assumptions below.
2. The Company has prepared the Cash Flow Statement based on probable and hypothetical assumptions that reflect the Company's planned course of action for the period of August 12, 2022 to November 4, 2022. Management is of the opinion that, as at the date of filing the Cash Flow Statement, the assumptions used to develop the projection represent the most probable set of economic conditions facing the Company and that the assumptions used proved a reasonable basis for and are consistent with the purpose of the Cash Flow Statement.
3. The Cash Flow Statement has been prepared by the Company and has been reviewed by the Proposal Trustee. The Proposal Trustee has not verified or confirmed certain expenses incurred by the Company which are reflected in this Cash Flow Statement.
4. The information contained in the Cash Flow Statement is subject to changing assumptions and/or receipt of new or additional information; actual results may vary. This Cash Flow Statement should not be used for any other purpose than its stated purpose, and creditors are cautioned that the information provided in the cash flow could vary based on changing future circumstances.

**Notes:**

1. Note that all amount referenced above are in USD.
2. The Collections are based on actual sales, sales projections, related payment terms, and the Company's best estimate on the receipt of such sales.
3. Trade Payables, Credit Cards and Employee Expenses relate to ongoing operations with an adjustment to consider that certain payment terms may change during the Cash Flow Statement period.
4. The IT Systems/Software Subscriptions payments reflect expected payments based on existing contracts for software that is critical to the operations of the Company.
5. Payroll and related payments are based on contractual arrangements in place with the respective employees.
6. Restructuring Fees relate to the fees to be incurred during these Proceedings. These expenses include the Company's counsel, Proposal Trustee fees, and the Trustee's Counsel's fees.
7. The Company plans to utilize Debtor in Possession financing to support operations during the Cash Flow Statement period.
8. The Company has made a SR&ED claim and is anticipating a payment from the Canada Revenue Agency, however the payment has not been included in the above cash flow statement as timing of receipt remains unknown.
9. The Company's cash flow statement does not contemplate the payment of pre-filing unsecured creditors, with the exception of potential Critical Suppliers (as defined). Furthermore, the cash flow statement does not contemplate any ongoing payments to the Company's secured creditors during the Cash Flow Statement period.

**Friday, August 26, 2022**

**iS5 Communications Inc.**

Per:

**Clive Dias, President**

**Grant Thornton Limited**

Per: Daniel Wootton

**Dan Wootton, CIRP, LIT**

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

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

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

**Proceedings commenced in Toronto**

**AFFIDAVIT OF CLIVE DIAS**
**(Sworn August 26, 2022)**

**FASKEN MARTINEAU DuMOULIN LLP**
333 Bay Street – Suite 2400
Toronto, ON  M5H 2T6

**Dylan Chochla (LSO#: 62137I)**

Tel: 416 868 3425
Email: dchochla@fasken.com

**Lawyers for the Moving Party, iS5 Communications Inc.**

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

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

**Proceeding commenced at Toronto**

**MOTION RECORD**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**Lawyers for the Moving Party, iS5 Communications Inc.**