

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

**Court No.: 31-2516167**  
**Estate No.: 31-2516167**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
ORBCARE INC. AND PARISCRIIBE INC., CORPORATIONS INCORPORATED UNDER THE  
CANADA BUSINESS CORPORATIONS ACT, AND ORBCARE US, INC. , A CORPORATION  
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE IN THE UNITED  
STATES OF AMERICA**

**FOURTH REPORT TO THE COURT**

**SEPTEMBER 24, 2019**

**I. INTRODUCTION**

1. On May 28, 2019, Orbcare Inc. (“**Orbcare**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), wherein MNP Ltd. was named as proposal trustee (the “**Proposal Trustee**”).
2. Notice of the NOI as prescribed by the BIA was sent on June 3, 2019 to all of Orbcare’s known creditors.
3. On June 22, 2019, Orbcare filed Notice of Motion and a Motion Record returnable June 25, 2019, seeking, among other things, a Court Order extending the time within which Orbcare had to file a proposal and an order authorizing Orbcare to obtain and borrow under a credit facility (the “**Credit Facility**”) from iGan Partners Inc. (the “**DIP Lender**”) on terms set out in the debtor-in-possession financing facility term sheet between Orbcare, the DIP Lender and certain guarantors dated June 11, 2019 and granting in favour of the DIP Lender a charge on Orbcare’s assets. The Proposal Trustee served its first report, dated June 24, 2019 (the “**First Report**”). A copy of the First Report, without exhibits, is attached hereto and marked as **Exhibit “A”**.
4. On June 25, 2019, the Court ordered the following:

- a. The date for the filing of the Orbcare's proposal be extended to August 12, 2019; and
  - b. Approving an interim financing facility with a maximum principal amount of \$1,200,000 (the "**Credit Facility**") and a charge (the "**DIP Lender's Charge**") on the Orbcare's assets, property and undertaking (collectively the "**Assets**") in favour of the DIP Lender.
5. OrbCare has the following wholly owned subsidiary corporations:
  - a. Pariscribe Inc. ("**Pariscribe**"), which is incorporated pursuant to the *Canada Business Corporations Act* and which operates in the same business as OrbCare; and
  - b. OrbCare US Inc. ("**Orbcare US**", and collectively with Pariscribe and Orbcare, the "**Companies**"), which is incorporated pursuant to the Delaware *General Corporation Law* and which also operates in the same business as OrbCare, principally in the United States.
6. Pariscribe filed a NOI on July 26, 2019 under estate #31- 2539066 and Orbcare US filed a NOI on July 29, 2019 under estate #31-2539459. MNP is named as the Proposal Trustee in each of these filings. Notice of the Pariscribe NOI and Orbcare US NOI, as prescribed by the BIA, were sent on August 2, 2019 to all of Pariscribe's and Orbcare US' known creditors.
7. On July 29, 2019, the Companies filed a Notice of Motion and a Motion Record returnable July 30, 2019, seeking, among other things, an order: (i) extending the time within which the Company had to file a proposal; (ii) authorizing Orbcare US and Pariscribe to borrow under the Credit Facility; and (iii) approving the procedural consolidation of the Companies' proposal proceedings. The Proposal Trustee served its second report, dated July 29, 2019 (the "**Second Report**"). A copy of the Second Report, without exhibits, is attached hereto and marked as **Exhibit "B"**.
8. On July 30, 2019, Justice Dietrich issued an endorsement adjourning the matter to August 1, 2019.
9. On August 1, 2019 the Court issued Orders that, *inter alia*:

- a. extended the time in which the Companies may file a proposal to September 26, 2019 (the “**First Extension Order**”);
  - b. approved the extension of the Credit Facility, pursuant to a revised term sheet (the “**Amended and Restated DIP Term Sheet**”), to Pariscribe and Orbcare US, and extended the DIP Lender’s Charge such that it provides for a charge on the assets of the Companies in favour of the DIP Lender (the “**Credit Facility Extension Order**”); and
  - c. consolidated the proceedings of the Companies such that a single court file number and title of proceeding shall be used (the “**Procedural Consolidation Order**”).
10. On August 9, 2019, the Companies served a Notice of Motion and Motion Record returnable August 14, 2019, seeking an order, *inter alia*:
- a. approving a sale process (the “**Sale Process**”) to be conducted by the Proposal Trustee;
  - b. approving a stalking horse asset purchase agreement (the “**Stalking Horse APA**”) entered into by the Companies and iGan Partners Inc. (“**iGan**”), as purchaser, for the purpose of constituting a stalking horse bid under the Sale Process; and
  - c. the approval of a break fee in favor of iGan in relation to the Stalking Horse APA (the “**Break Fee**”).

The Proposal Trustee served its third report, dated August 9, 2019 (the “**Third Report**”) in connection with that motion. A copy of the Third Report, without exhibits, is attached hereto and marked as **Exhibit “C”**.

11. On August 14, 2019 the Court issued an Order (the “**Sale Approval Order**”) that, *inter alia*:
- a. approved the Sale Process, subject to the prior approval of the Court being obtained before the completion of any transaction(s) under the Sale Process;

- b. approved, authorized and ratified the execution, delivery, entry into, compliance with, and performance by the Companies of the Stalking Horse APA; and
  - c. approved the Break Fee and the Stalking Horse APA solely for the purpose of standing as the Stalking Horse Bid in the Sale Process, provided that if iGan is successful bidder in the Sale Process, implementation of the transaction contemplated by the Stalking Horse APA is subject to Court approval.
12. Information regarding the NOI proceedings have been posted to the Proposal Trustee's website at <https://mnpdebt.ca/en/corporate/Engagements/orbcare-inc>. Pursuant to the Procedural Consolidation Order the website used for Orbcare is also being used for Pariscribe and Orbcare US.
13. The primary purpose of the Companies' proposal proceedings is to provide stability to the Companies' business while the Companies, with the assistance of the Proposal Trustee, restructures the business and works on formulating and presenting a viable proposal to the Companies' creditors.

## II. RESTRICTIONS

14. In preparing this report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Giner Affidavits (as defined below), the Companies' books and records, discussions with management of the Companies and information from other third-party sources (collectively, the "**Information**"). Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
15. The Proposal Trustee also bases its report on the Companies' cash flow projections and underlying assumptions, and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice No. 99-5 (Trustee's Report

on Cash Flow Statement). Certain of the information referred to in this report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by Chartered Professional Accountants Canada, has not been performed. Future oriented financial information referred to in this report was prepared based on estimates and assumptions provided by the Companies' management. Readers are cautioned that, since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

16. All dollar references herein are in CDN\$ unless otherwise specified.

### III. PURPOSE OF THIS REPORT

17. The purpose of this Fourth Report is, *inter alia*, to:

- a. Update the Court with respect to:
  - i. the activities of the Companies and the Proposal Trustee since the Third Report;
  - ii. Orbcare and Pariscribe's actual receipts and disbursements in comparison to its cash flow projections for the period July 22, 2019 to September 22, 2019 and updated and extended cash flow projections, and the Proposal Trustee's observations regarding same;
  - iii. Orbcare US's actual receipts and disbursements in comparison to its cash flow projections for the period August 5, 2019 to September 22, 2019 and updated and extended cash flow projections, and the Proposal Trustee's observations regarding same (together with the Orbcare and Pariscribe comparisons, the "**Monitored Period**"); and
  - iv. the status of the Sale Process.

- b. provide the Court with the Proposal Trustee's recommendation for an order, *inter alia*, approving the extension of the time for the Companies to file a proposal with the Official Receiver (the "**Stay Period**") to and including November 10, 2019.

#### **IV. BACKGROUND INFORMATION**

18. Orbcare is a federally incorporated company carrying on business out of its leased premises in Toronto, Ontario. Orbcare provides a range of software information technology solutions to clients in the healthcare sector in order to streamline clinic operations and patient care.
19. The affidavits of Olivier Giner sworn June 23, 2019, July 29, 2019 and August 3, 2019 (together with the affidavit sworn September 22, 2019 the "**Giner Affidavits**") detail the causes of Orbcare's financial difficulties, which include the following:
  - a. insufficient record keeping or controls on the use or release of company funds;
  - b. financial records that were dated and incomplete;
  - c. failure to maintain adequate customer records and to diligently track customer invoicing and accounts receivable;
  - d. Orbcare's costs of operations were too high, notably due to an unnecessarily large number of employees; and
  - e. as detailed in the Second Report, Pariscribe's failure to meet its financial obligations under the terms of a distribution agreement governing Pariscribe's distribution of a third-party archiving and communication software (PACS) known as NILReader.
20. Additional information in respect of the Companies, including their assets and liabilities, is set out in the Giner Affidavits. The Proposal Trustee has not repeated such details in this Report.

#### **V. CASH FLOW PROJECTIONS**

21. On June 7, 2019, Orbcare filed a projected weekly cash flow statement for the period commencing June 1, 2019 and ending on September 1, 2019, which was reviewed by the Proposal Trustee for reasonableness and signed by the Proposal Trustee and Orbcare (the

**“Orbcare CDN Cash Flow Projections”**). A copy of the Orbcare CDN Cash Flow Projections, and related reports, were appended to the First Report.

22. In support of Orbcare’s motion returnable July 30, 2019, the Companies, with the assistance of the Proposal Trustee, prepared an updated weekly cash flow projection for the period of July 22, 2019 to October 13, 2019 (the **“Revised Orbcare CDN Cash Flow Projections”**), a copy of which, together with the reports of management and the Proposal Trustee on said projections, were appended to the Second Report. The Revised Orbcare CDN Cash Flow Projections were prepared using the probable and hypothetical assumptions set out in the notes attached to the Revised Orbcare CDN Cash Flow Projections.
23. As the operations of Orbcare and Pariscribe are effectively run as a single business entity, the Revised Cash Flow Projections were prepared such that they include all amounts that would be collected by or expended from both Orbcare and Pariscribe. Accordingly, the Revised Cash Flow Projections, including the probable and hypothetical assumptions thereof, were filed in duplicate with the Official Receiver on July 29, 2019 for the NOI filing of Pariscribe.
24. The Revised Cash Flow Projections do not include the cash flow activity of Orbcare US. Therefore, in connection with the NOI filing of Orbcare US, Orbcare US filed a separate statement of projected weekly cash flow, which was reviewed by the Proposal Trustee for reasonableness and signed by the Proposal Trustee and Orbcare US (the **“Orbcare US Cash Flow Projections”**). A copy of the Orbcare US Cash Flow Projections, and related reports, were appended to the Third Report.
25. To date, the Companies have provided the Proposal Trustee with their full co-operation and unrestricted access to their premises, and books and records.
26. The Proposal Trustee implemented procedures for monitoring the Companies’ receipts and disbursements and has kept in close contact with management to ensure that operations are continuing in the normal course of business and in accordance with the Revised Orbcare CDN Cash Flow Projections and the Orbcare US Cash Flow Projections.

27. Orbcare and Pariscribe’s actual receipts and disbursements for the period of July 22, 2019 to September 22, 2019 is set out below, with a comparison to the Revised Orbcare CDN Cash Flow Projections:

<b>Orbcare Inc and Pariscribe Inc</b>			
<b>July 22, 2019 to September 22, 2019</b>			
	<b>(Forecast)</b>	<b>(Actual)</b>	<b>(Variance)</b>
<b>Receipts</b>			
Collection of Receivables			
Orbcare	193,739	106,659	(87,080)
Pariscribe	109,502	51,236	(58,266)
Provincial Taxes	15,616	9,727	(5,890)
Funds from Loan	400,000	450,000	50,000
<b>Total Receipts</b>	<b>718,858</b>	<b>617,622</b>	<b>(101,236)</b>
<b>Disbursements</b>			
Payroll	337,448	319,652	17,796
Rent	3,322	7,910	(4,588)
SG&A	26,422	8,736	17,686
Technology	12,196	20,173	(7,977)
Advisors	181,171	110,845	70,326
Provincial Taxes	0	0	0
Repayment to Loan	0	0	0
<b>Total Disbursements</b>	<b>560,559</b>	<b>467,316</b>	<b>93,243</b>
<b>Net Operating Cash Flows</b>	<b>158,299</b>	<b>150,306</b>	<b>(7,994)</b>

28. A summary of Orbcare US’s actual receipts and disbursements (presented in \$USD) for the period of August 5, 2019 to September 22, 2019 is set out below, with a comparison to the Orbcare US Cash Flow Projections:



<b>Orbcare US Inc.</b>			
June 3, 2019 to September, 2019			
	(Forecast)	(Actual)	(Variance)
<b>Receipts</b>			
Collection of Receivables	52,406	32,508	(19,898)
Collection from New Sales	55,900	29,855	(26,045)
<b>Total Receipts</b>	<b>108,306</b>	<b>62,363</b>	<b>(45,943)</b>
<b>Disbursements</b>			
Payroll	24,342	25,629	(1,287)
Rent	836	1,092	(256)
SG&A	1,487	939	548
Technology	71,600	29,218	42,382
Advisors	20,000	0	20,000
<b>Total Disbursements</b>	<b>118,265</b>	<b>56,878</b>	<b>61,387</b>
<b>Net Operating Cash Flows</b>	<b>(9,959)</b>	<b>5,485</b>	<b>15,444</b>

29. The Proposal Trustee offers the following commentary with respect to material variances in the actual cash flows of the Companies' in comparison to the Revised Orbcare CDN Cash Flow Projections and the Orbcare US Cash Flow Projections:

a. Collection of Receivables

As further detailed in the Giner Affidavits, Orbcare recently had a change of management. The new management determined that the Companies' financial records were not current, complete, reliable or accurate, which resulted in Orbcare and Pariscribe being unable to verify the existence and value of certain accounts receivable. The negative variance in the collection of receivables is largely related to this lack of reliable information available to management when preparing the Orbcare CDN Cash Flow Projections. While the large variance in collection of receivables relates primarily to amounts owing prior to the NOI, there are certain post-NOI invoices which, while forecasted for, were not paid during the Monitored Period.

The Companies have been working to resolve a software issue which has negatively affected certain customers' use of the service offerings of the Companies. This has

resulted in the Companies not being able to collect approximately CDN\$35,000 and USD\$14,000, which was forecast to be collected during the Monitored Period.

b. Payroll

The positive variance during the Monitored Period is of timing in nature.

c. Rent

The negative variance in rent is for amounts that are owing as a refund by Orbcare and Pariscribe's landlord as certain amounts were automatically, and erroneously, withdrawn by the landlord subsequent to Orbcare giving notice to its landlord that it disclaimed the commercial lease. The variance is timing in nature.

d. SG&A

The Companies have advised that the SG&A costs were over-estimated for the forecasts related to the Monitored Period.

e. Technology

The large positive variance in Orbcare US's technology for the Monitored Period is a result of negotiations between Orbcare US and one of its key technology suppliers. Prior to the NOI, the technology supplier was paid for the use of servers by Orbcare US with little actual utilization of the servers made by Orbcare US during that period. Orbcare US has advised that the supplier has agreed to allow for continued service from June of 2019 to September of 2019 using the amounts that were deemed to have been overpaid from the pre-NOI period.

f. Advisors

The Companies' advisors, including the Companies' legal counsel, the Proposal Trustee and its legal counsel have not been paid all amounts that have been invoiced during the NOI period. The Companies currently have sufficient cash to pay outstanding balances and the negative variance noted during the Monitored Period is of timing in nature as it is expected that all amounts outstanding will be paid.

30. As of the date of this Fourth Report, the Companies are current with respect to their obligations to employees, including the payment of all post-NOI outstanding wages and vacation pay, as well as source deduction remittances to the Canada Revenue Agency.

## VI. SALE PROCESS

31. The following steps were taken by the Proposal Trustee, with the assistance of the Companies, to conduct the Sale Process:
- a. On August 21, 2019, the Proposal Trustee distributed via e-mail a brief interest solicitation letter (the “**Teaser**”) to prospective purchasers. The distribution list included:
    - i. companies identified by the Orbcare as potentially having an interest in the business;
    - ii. companies known by the Proposal Trustee and its affiliated MNP Corporation Finance practice to invest in health service technology businesses; and
    - iii. selected venture capital and other investment firms.
  - b. Subsequent to the e-mails sent on August 21, 2019, the Proposal Trustee sent the Teaser to additional parties, who were identified as prospective purchasers during the Sale Process.
  - c. On August 19, 2019, the Proposal Trustee advertised the acquisition opportunity in the National Edition of the Globe and Mail Newspaper. A copy of the advertisement is attached as **Exhibit “D”**.
  - d. In addition to the advertisements to be placed as per the Sale Process, on August 22, 2019 the Proposal Trustee, in consultation with Orbcare, placed an advertisement of the acquisition opportunity in Canadian Healthcare Technology Magazine’s e-mail publication. Additional e-mail notices were published in the *Insolvency Insider* e-mail publication on September 3, 9, 16, and 23, 2019. The Proposal Trustee believes that these e-mail publications have led to additional interest in the acquisition

opportunity. A copy of the advertisement in the Canadian Healthcare Technology Magazine's e-mail publication is attached as **Exhibit "E"**.

- e. On September 3 and 11, 2019, following Labour Day, the Proposal Trustee sent a reminder email to all prospective purchasers that had not yet responded to previous e-mails or which had been identified as a prospective purchaser subsequent to August 21, 2019.
- f. A secure online data room has been set up containing additional information and documents in respect of the Companies and its business and assets, including a Confidential Information Memorandum ("**CIM**"). Access to the online data room has been provided to all interested parties that signed a confidentiality and non-disclosure agreement ("**NDA**").
- g. The Proposal Trustee offered prospective purchasers an opportunity to meet with the Companies' management and development teams in order for the Companies to demonstrate its platform to prospective purchasers. These meetings also permitted prospective purchasers to pose questions to the Companies and the Proposal Trustee.

32. Offers are due at 5 PM (Toronto Time) on September 27, 2019 (the "**Bid Deadline**").

## **VII. COMPANIES' ACTIVITIES AND FINANCING**

- 33. Since the Third Report, the Companies have assisted the Proposal Trustee in the implementation of the Sale Process including assisting in the preparation of a list of potentially interested parties and providing the data used to populate a data room.
- 34. As per the Giner's Affidavits, the Companies terminated the employment of its former Chief Executive Officer.
- 35. The Credit Facility provides the Companies the ability to draw on a monthly occurrence with a limit of \$1.2MM subject to the issuance by the Proposal Trustee of its certification of approval of the Companies' request for a draw. To date, Orbcare has made two draws on the Credit Facility in the amounts of \$225,000 in the month of August and \$250,000 in the month of September. Attached hereto as **Exhibits "F"** and "**G"** are the certificates

issued by the Proposal Trustee approving the Companies' requests for the monthly draws taken on the Credit Facility.

### VIII. EXTENSION OF THE STAY PERIOD

36. The current Stay Period expires at midnight on September 26, 2019 and the Companies seek an extension of the Stay Period for 45 days to and including November 10, 2019 (the **"Proposed Extension"**).
37. The Companies require the additional time afforded by the Proposed Extension to complete the Sale Process. Without the extension, the Companies will not be able to preserve the possibility of completing a going-concern transaction, to the detriment of their creditors and other stakeholders.
38. The Proposed Extension contemplates that the Proposal Trustee, in consultation with the Companies, will have the opportunity to obtain and review offers made pursuant to the Sale Process, to conduct an auction (as defined in the Sale Process Order) if needed, and to seek approval by the Court of the Winning Bid (as defined in the Sale Process Order) prior to the expiration of the Stay Period, should this court grant the Proposed Extension.
39. The Companies have prepared revised cash flow projections and related assumptions for the period commencing September 23, 2019 and ending December 1, 2019 (the **"Second Revised Orbcare CDN Cash Flow Projections"** in relation to Orbcare and Pariscribe and the **"Revised Orbcare US Cash Flow Projections"** in relation to Orbcare US). Copies of the Second Revised Orbcare CDN Cash Flow Projections and the Revised Orbcare US Cash Flow Projections, together with the reports of management and the Proposal Trustee were filed with the Official Receiver on September 24, 2019 and are attached as **Exhibits "H" and "I"** respectively.
40. As set out in the Second Revised Orbcare CDN Cash Flow Projections and the Orbcare US Cash Flow Projections, it appears that the Companies, with the support of the Credit Facility, will have sufficient funds available to continue operating and meet their obligations through to the end of the Proposed Extension.

41. The Proposal Trustee supports the Companies' request for an extension and has also considered that:

- a. the Companies have acted, and continue to act in good faith and with due diligence in their operations and dealings with their stakeholders;
- b. the Companies are projected to have sufficient funds to pay for post-filing services and supplies in the amounts contemplated in the Second Revised Orbcare CDN Cash Flow Projections and the Revised US Cash Flow Projections;
- c. that no other creditor is prejudiced by the requested extension;
- d. that the proposed extension allows for the completion of the Sale Process, which could result in greater recoveries than in a liquidation within a bankruptcy scenario; and
- e. if offers are received, it is expected that the Companies will then be in a position to consider formulating and presenting a viable proposal to their creditors.

## **IX. CONCLUSIONS AND RECOMMENDATIONS**

42. Based on the foregoing as outlined in the body of this Fourth Report, the Proposal Trustee respectfully recommends that the Court make an order approving the extension of the Stay Period to and including November 10, 2019.

All of which is respectfully submitted this 24<sup>th</sup> day of September, 2019.

### **MNP Ltd.**

in its capacity as Trustee under  
the Notice of Intentions to Make a Proposal of  
Orbcare Inc., Pariscribe Inc. and Orbcare US Inc.

Per:



Sheldon Title

Court No.: 31-2516167

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF ORBCARS INC. AND PARISCRIIBE INC.,  
CORPORATIONS INCORPORATED UNDER THE CANADA BUSINESS CORPORATIONS ACT, AND ORBCARE US, INC., A  
CORPORATION INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE IN THE UNITED STATES OF  
AMERICA

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

**REPORT TO THE COURT SUBMITTED BY MNP LTD., IN  
ITS CAPACITY AS TRUSTEE UNDER THE  
NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
ORBCARE INC., ORBCARE US INC. AND PARISCRIIBE  
INC.**

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