

Estate No. 31-2516167

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

**IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE INC., AND
PARISCRIBE 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**

**MOTION RECORD
(returnable August 14, 2019)
(Approval of Sale Process)**

DATE: August 9, 2019

GOLDMAN SLOAN NASH & HABER LLP
Suite 1600, 480 University Avenue
Toronto (ON) M5G 1V2
Fax: 416-597-3370

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for OrbCare Inc., Pariscribe Inc. and
OrbCare US, Inc.

TO: THE SERVICE LIST

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TAB 1

ONTARIO
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NOTICE OF MOTION
(returnable August 14, 2019)
(Approval of Sale Process)

OrbCare Inc. (“**OrbCare**”), Pariscribe Inc. (“**Pariscribe**”) and OrbCare US, Inc. (“**OrbCare US**”, and together with OrbCare and Pariscribe, the “**Companies**”) will make a motion to a judge of the Commercial List at 330 University Avenue, Toronto, Ontario, on Wednesday, August 14, 2019, at 9:30 a.m. or as soon thereafter as the motion can be heard.

THE PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is made without notice;
- in writing as an opposed motion under subrule 37.12.1(4); or
- orally.

THE MOTION IS FOR AN ORDER:

- a) Abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- b) Approving a sale process (the “**Sale Process**”), substantially on the terms appended to the Third Report of MNP Ltd., in its capacity as proposal trustee (the “**Proposal Trustee**”) to be filed, (the “**Third Report**”) and authorizing the Proposal Trustee to carry out the Sale Process;

[2]

- c) Approving the “stalking horse” asset purchase agreement dated August 8, 2019 (the “**Stalking Horse APA**”) between the Companies and iGan Partners Inc., in trust for a company to be incorporated (“**iGan**”), as purchaser, for the purpose of constituting a stalking horse bid under the Sale Process;
- d) Approving the Break Fee set out in Section 6.4 of the Stalking Horse APA; and
- e) such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) On May 28, 2019 OrbCare filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”);
- (b) OrbCare subsequently brought a motion on June 25, 2019 seeking approval of a \$1.2 million debtor in possession credit facility (the “**DIP Facility**”) from iGan and related priority DIP charge (the “**DIP Charge**”);
- (c) On July 26, and July 29 respectively, Pariscribe and OrbCare US each filed NOIs;
- (d) August 1, 2019 the Court granted orders, among other things, authorizing Pariscribe and OrbCare US to also borrow under the DIP Facility and extending the DIP Charge accordingly;
- (e) Also on August 1, the Court granted an order procedurally consolidating the estates of all of the Companies under a single court file number;

The Stalking Horse APA

- (f) Pursuant to the DIP Facility, the Companies are obliged to obtain approval for and implement a sale process on or prior to August 15, 2019;

[3]

- (g) In order to commence the process, the Companies have now entered into the Stalking Horse APA with iGan with respect to the sale of all the Companies' assets;
- (h) Pursuant to the terms of the Stalking Horse APA, iGan has agreed to purchase substantially all of the Companies' assets and assume certain contracts and employees of the Companies – the material terms of the Stalking Horse APA are as follows:
 - (i) Purchase Price: \$1.2 million consisting of a credit bid of the amounts outstanding under the DIP Facility as of closing, certain Assumed Liabilities (to be agreed upon by August 31) and cash;
 - (ii) Contracts: iGan will notify the Companies and the Proposal Trustee which contracts it plans on taking assignment of prior to August 31 – iGan agrees to be responsible for any cure costs required to be paid for assignment of such contracts;
 - (iii) Conditions: The only condition of substance is the requirement for an approval and vesting order; and
 - (iv) Break Fee: iGan will be entitled to a \$60,000 break fee in the event that the Companies close a transaction with a different buyer after auction;

The Sale Process

- (i) In connection with the Stalking Horse APA, the Proposal Trustee will conduct the Sale Process to solicit higher or better offers than those set out in the Stalking Horse APA;
- (j) The material terms of the Sale Process are as follows:
 - (i) Within 5 business days of the granting of the sale process order, the Proposal Trustee will advertise the process in the *Globe and Mail* (National Edition) and begin making available to interested parties who have signed confidentiality agreements a data room with relevant information;

[4]

- (ii) Bidders must submit bids in writing to the Proposal Trustee no later than 5pm (Toronto time) on September 27, 2019 (the “**Bid Deadline**”);
 - (iii) Among other things, in order for a bid to qualify as a “qualified bid”, it must be on terms no less favourable than and no more burdensome than the Stalking Horse APA, must not contain any provision for a break fee or expense reimbursement and must contain a purchase price that is at least \$1.2 million plus the \$60,000 break fee and an additional increment of \$50,000 (i.e. \$1.31 million);
 - (iv) The Proposal Trustee will determine whether any offers are “qualified bids” and should the Proposal Trustee receive one or more qualified bids, the Proposal Trustee will schedule and conduct an auction not more than 5 business days after the Bid Deadline (the “**Auction**”);
 - (v) Upon selection of a successful bid, the Companies will seek Court approval of the successful bid within ten business days following the Auction; and
 - (vi) If no qualified bids are received by the Bid Deadline, no Auction will be held and the Companies will seek Court approval to finalize the transaction contemplated under the Stalking Horse APA with iGan;
- (k) The proposed Sale Process order will allow the process for solicitation of interest on an expedited basis;
- (l) Further, as set out above, if the Sale Process is not approved on or before August 15, 2019, it will constitute a default under the DIP Facility;
- (m) The Proposal Trustee is recommending that the Sale Process be approved by the Court on the basis that it is an effective strategy to maximize the value of the Companies’ business and assets, and in the view of the Proposal Trustee, the Stalking Horse APA will provide a benchmark for the realization of the Companies’ business and assets, while at the same time providing a forum and deadline to permit and encourage any

serious alternative bidders to come forward with firm offers as part of a going concern transaction;

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

- (a) The affidavit of Olivier Giner sworn August 3, 2019;
- (b) The Third Report of the Proposal Trustee, to be filed; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: August 9, 2019

GOLDMAN SLOAN NASH & HABER LLP

Suite 1600, 480 University Avenue
Toronto (ON) M5G 1V2
Fax: 416-597-3370

R. Brendan Bissell (LSO# 40354V)

Tel: 416-597-6489

Email: bissell@gsnh.com

Lawyers for OrbCare Inc., Pariscribe Inc. and
OrbCare US, Inc.

TO: THE SERVICE LIST

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL
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Estate File No. 31-2516167

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced in TORONTO

NOTICE OF MOTION
(returnable August 14, 2019)
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GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for OrbCare Inc. Pariscrcribe Inc. and
OrbCare US, Inc.

TAB 2

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**AFFIDAVIT OF OLIVIER GINER
(sworn August 3, 2019)**

I, Olivier Giner, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer and a director of OrbCare Inc. ("**OrbCare**") and its wholly owned subsidiaries, Pariscribe Inc. ("**Pariscribe**") and OrbCare US, Inc. ("**OrbCare US**") (collectively with OrbCare, the "**Companies**") and have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and verily believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisers of the Companies and other members of the management teams of the Companies.
2. My affidavits sworn June 25, 2019 and July 29, 2019 set out the details of my involvement with the Companies and the history of this matter. Those affidavits are attached to this affidavit (without exhibits) as **Exhibit "A"** and **Exhibit "B"**.
3. The Companies are in the process of finalizing an agreement with iGan Partners Inc. ("**iGan**") to sell all of the Companies' assets to iGan under a stalking horse agreement. The final

form of that agreement will be attached to the report of MNP Ltd. in its capacity as trustee of the proposals of the Companies, but since the court materials for a motion to approve the final form of stalking horse agreement will be delivered while I am away from Toronto, I am making this affidavit to provide background to the factors that led the Companies to decide to enter into this transaction, subject to Court approval.

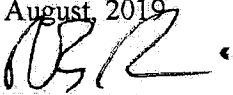
4. The factors that the Companies considered in this regard were:
 - a) iGan was already familiar with the affairs of the Companies, and was prepared to (and did) act quickly to propose and then finalize a stalking horse agreement, without further due diligence;
 - b) in contrast, recent preliminary discussions that the Companies had with possible investors or purchasers of the business indicated that a due diligence period of weeks would likely be necessary before a term sheet could be forthcoming, after which drafting of legal documents would take more time;
 - c) the stalking horse agreement is by its nature non-exclusive, as it allows for a broad sales and investment solicitation process to take place, which is in the best interest of the Companies;
 - d) the proposed iGan stalking horse transaction provides a significant amount of recovery for creditors of the Companies and also demonstrates to other potential purchasers or investors that a venture capitalist company such as iGan, who is familiar with the affairs of the Company, places value on the Companies' assets; and
 - e) a stalking horse purchaser will allow a sales and investment solicitation process to take place in a context where a purchaser of the business is assured, which will assist the Companies in dealings with suppliers, customers and employees to maintain business as a going concern

5. On July 31, 2019, the boards of directors of the Companies authorized each of them to enter into a stalking horse agreement and pursue a sales process for the sale of their assets or an investment.

6. The Companies are currently finalizing the preparation of financial information and other materials to be part of a data room in anticipation of a sales process that would begin on August 15th.


7. The Companies believe that this is the best course of action in the circumstances and that such process is best run by the proposal trustee in these proceedings.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, this 3rd
day of August, 2019



Commissioner for taking affidavits

R. B. Bissett



Olivier Giner

TAB A

This is **Exhibit "A"** to the
Affidavit of Olivier Giner,
sworn before me this 3rd day
of August, 2019



A Commissioner, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE INC., A
CORPORATION INCORPORATED UNDER THE CANADA
BUSINESS CORPORATIONS ACT

AFFIDAVIT OF OLIVIER GINER
(sworn June 13, 2018)

I, Olivier Giner, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. This affidavit is made in support of a motion made by OrbCare Inc. (“OrbCare”) for (i) an order extending from June 27, 2019, to August 12, 2019 the time limit for MNP Ltd. (“MNP”) in its capacity as proposal trustee (the “Trustee”) to file with the official receiver, on behalf of OrbCare, a proposal pursuant to the *Bankruptcy and Insolvency Act* (the “BIA”); (ii) an order authorizing OrbCare to obtain and borrow under a credit facility (the “Credit Facility”) from iGan Partners Inc. (“iGan” and, as proposed DIP lender, the “DIP Lender”) on terms set out a the debtor in possession financing facility term sheet, discussed further below, between OrbCare, the DIP Lender and certain guarantors dated June 11, 2019 (the “DIP Term Sheet”); and granting in favour of the DIP Lender a charge (the “DIP Lender’s Charge”) on OrbCare’s current and future assets, undertakings and property.

2. I became a director of OrbCare on September 13, 2018. On April 9, 2019 I signed an employment contract to become Chief Operating Officer (“COO”) of OrbCare starting on July 1st, 2019, and to work primarily in accounting and operations management.

Despite the purported effective date of July 1st, due to the emergency of certain accounting and operating matters, it was agreed that I would commence working as COO of OrbCare immediately, but as a contractor, from April 9, 2019 to June 30, 2019, inclusively. I was subsequently appointed by the board of directors of OrbCare as Chief Executive Officer (“CEO”) and COO of OrbCare on May 17, 2019.

3. Before becoming a director of OrbCare, I was an employee (Vice-President and Chief Compliance Officer) of iGan and it was as a representative of iGan that I initially became a director of OrbCare in September 2018. On March 10, 2019 I notified iGan that I wished to pursue other interests, which led to my joining OrbCare as COO in April 2019. It was nonetheless agreed that I would continue to serve as the Chief Compliance Officer of iGan, on an interim basis, either until a replacement was found or until June 30, 2019, whichever comes first.
4. I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and verily believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisers of OrbCare and other members of the management team of OrbCare.

I. OVERVIEW OF ORBCARE

5. On October 8, 2013, OrbCare was incorporated under the name VConsult Services Inc. pursuant to the *Canada Business Corporations Act* (the “CBCA”). It is headquartered in Toronto, with its principal place of business at 21R Atlantic Avenue, Toronto (ON) M6K 3E7. The whole appears from a corporate profile report for OrbCare, of which a copy is attached hereto as **Exhibit A**.
6. On September 19, 2015, the company changed its name to OrbCare Inc., as appears from the corporate profile report.
7. OrbCare’s business is to provide a range of software information technology (IT) solutions to clients operating in the healthcare sector, including specialty clinics such as

radiology clinics, fertility clinics, and mental health clinics. OrbCare has approximately 12 direct clients.

8. OrbCare has the following subsidiary corporations:

a. a wholly owned subsidiary, Pariscribe Inc. (“Pariscribe”), which was incorporated under the CBCA on November 24, 2008 as appears from a corporate profile report for Pariscribe, of which a copy is attached hereto as **Exhibit B**. Pariscribe operates in the same business as OrbCare, and has 19 clients (additional to OrbCare’s own clients); and

b. a wholly owned subsidiary, OrbCare US, Inc. (“OrbUS”), which was incorporated under the laws of Delaware on March 15, 2016 as appears from an Annual Franchise Tax Report for OrbUS, of which a copy is attached hereto as **Exhibit C**. OrbUS operates in the same business as OrbCare and has 6 clients (additional to OrbCare’s an Pariscribe’s own clients).

9. On September 13, 2018, OrbCare obtained a \$2M financing (the “2018 Financing”) in return for preferred shares from a group of investors led by iGan. As a condition to the 2018 Financing, on the same date, OrbCare acquired for a nominal consideration all the outstanding shares of Pariscribe, which until then was a sister company and as a result became a wholly owned subsidiary of OrbCare.

10. Not including US operations, OrbCare counts 21 employees and 2 contractors.

II. DISCOVERY AND CAUSES OF INSOLVENCY

11. As stated above, I became a director of OrbCare on September 13, 2018.

12. An OrbCare board meeting was held on December 5, 2018, where OrbCare’s monthly revenues and expenses were represented to be respectively \$283,000 and \$325,000, representing an overall financial situation and net cash burn in alignment with

expectations and representations made in the context of the 2018 Financing. No other board meeting of OrbCare was held until I joined as COO in April 2019.

13. In the months of September 2018 through March 2019, in my capacity as Vice-President of iGan and as a director of OrbCare, I discussed with OrbCare's management whether OrbCare's financial reporting was sufficient for, notably, (i) eventually raising additional capital; and (ii) satisfying contractual obligations to deliver financial information to investors in link with the 2018 Financing.
14. In the months of September 2018 through March 2019, under my supervision as VicePresident of iGan, several requests were made by iGan to OrbCare for financial information.
15. At the beginning of the month of April 2019, in anticipation of joining OrbCare as COO, additional requests for financial information were addressed by iGan to OrbCare.
16. On April 1st, 2019, I attended the iGan annual general meeting, where OrbCare affirmed having monthly revenues of \$330,000.
17. On April 15, 2019, I attended the Framework Venture Capital Conference, where OrbCare again affirmed having monthly revenues of \$330,000.
18. It was around that time that I became more involved in the day-to-day, business, accounting and sales activities of OrbCare.
19. Since one of my responsibilities as COO was to entertain any financing opportunities, I intended to respond to numerous requests for financial reporting documentation from (i) iGan; (ii) other investors in the 2018 Financing and (iii) new potential investors.
20. I learned gradually that OrbCare's financial reporting was quite out of date and that no recent monthly or annual statements were available. Among other issues, no information was available in a format readily presentable, and I therefore took steps to obtain the raw data, such as bank statements, required to build such documentation.

21. On May 1st, 2019, OrbCare started gradually releasing financial information to me. Initially, only recent bank statements and credit card statements were provided.
22. I subsequently gained access to OrbCare's revised financial statements that were filed with the Canada Revenue Agency (the "CRA") for the year ending December 31, 2017, which represented significantly lower revenues than those represented in the initial, original financial statement that had been filed with the CRA for the same year and shared during the due diligence process related to the 2018 Financing.
23. I immediately entered into conversations and email exchanges with OrbCare's controller, Karen Backstrom, and learned for the first time that the company owed significant amounts to the CRA for unpaid payroll remittances.
24. Overall, in the course of my initial review of a selection of OrbCare's bank account and other financial records, and through conversations with Orbcare's controller and other employees, I noted that, among other things:
 - a. OrbCare may not have had sufficient record keeping or controls on the use or release of company funds;
 - b. OrbCare had not prepared any form of financial statements since the filing of its revised annual income tax return filed with the CRA for the year ending December 31, 2017;
 - c. OrbCare did not maintain adequate customer records and did not diligently keep track of customer invoicing and accounts receivable. I learned, for example, that certain entities which I had been told were current customers of OrbCare had in fact never been customers, or ceased to be customers of OrbCare or any of its subsidiaries;

- d. OrbCare's Quickbooks accounting records appeared dated and incomplete, including an apparent backlog of thousands of accounting entries that, to this date, have yet to be entered into its books;
 - e. OrbCare may have been liable for significant payable and unpaid debt towards its creditors, including the CRA; and
 - f. OrbCare's accounts payable may have been in excess of its cash reserves such that OrbCare had a much shorter operating runway than expected.
25. On or around May 2, 2019, I reported my initial findings to Sam Ifergan, CEO of iGan.
26. On or around May 6, 2019, I reported my findings to the other board members of OrbCare.
27. On May 17, 2019, the board of directors of OrbCare resolved to make changes in the management of OrbCare, including my appointment as COO and CEO, with the intention to attempt to stabilize the operational and cashflow situation of OrbCare as well as continue to review the actual financial situation of the company.
28. On or around May 23, 2019, I had come to the following factual conclusions:
- a. OrbCare's gross revenue per month was not in the range of \$300,000 as had been previously reported, but was closer to \$150,000 per month (including US operations);
 - b. Monthly expenses were in the range of \$260,000 per month (including US Operations);
 - c. Cash balances, which were expected to be significant after the relatively recent 2018 Financing, were significantly lower than expected;
 - d. there were significant amounts owing to the CRA, including an amount in excess of \$500,000 for unpaid payroll source contributions, as well as amounts for HST

and corporate tax which remain to be precisely calculated by reason of OrbCare incomplete record keeping; and

- e. the CRA had previously taken collection steps on account of unpaid amounts due in 2017 through the garnishment of OrbCare's bank accounts;

all of which led me to believe that:

- f. OrbCare's costs of operation were too high, notably due to an unnecessarily large number of employees;
 - g. OrbCare would probably lack liquidity to fund its essential business activities within two months; and
 - h. OrbCare was at risk of imminent further CRA collection efforts, which would impair or cease OrbCare's ability to continue as a going concern.
29. At my initiative on May 23 and May 24, 2019, the directors and shareholders of OrbCare held several meetings with MNP and legal counsel for OrbCare in order to discuss the options available to the company.
30. On or around May 27, 2019, after obtaining advice from OrbCare's legal counsel and the Trustee, OrbCare's board of directors, including myself, came to the conclusion that by reason of accumulated debt, OrbCare was insolvent and would have to negotiate with its creditors and put forward a proposal to permit maximum recovery and minimum alteration of the creditors' rights while ensuring the continuation of OrbCare's business for the benefit of all its stakeholders including its employees, shareholders and creditors.
31. On May 27, 2019 Orbcare held a board meeting and the board members signed a resolution to authorize the filing of a notice of intention to make a proposal (the "NOI") and retain MNP as trustee thereto;

32. On or around May 27, 2019, I retained Vizhenbooks, a service company specialized in assisting other companies regarding bookkeeping, to assist OrbCare in regularizing its financial statements with a primary focus on the fiscal year ending December 31, 2018.
33. On May 28, 2019, OrbCare filed the NOI under what I understand to be Section 50.4 of the BIA and the Trustee accepted to act as proposal trustee, as set out in a copy of the Certificate of Filing of the NOI attached hereto as **Exhibit D**.

III. EXTENSION OF TIME TO FILE A PROPOSAL

34. As noted above, I believe that OrbCare has acted in good faith and with due diligence before the filing of the NOI in order to regularize its financial situation. I believe it has continued to do so since, as detailed below.
35. Since the filing of the NOI, OrbCare has continued to actively work with the Trustee and Vizhenbooks in order to redress its financial reporting, and put forward a viable proposal to creditors. This has included the retainer of the forensic accounting services of MNP to assist in the review of OrbCare's financial data and available records in order to attempt to properly state the financial records and position of the company, among other things. That work has been mostly completed to for the months of September 2018 to April 2019, and the review for the months of January to August 2018 is ongoing.
36. This task is relatively complex and time consuming and, despite said good faith and due diligence, could not be completed within 30 days following the filing of the NOI. Based on my discussions with Vizhenbooks and MNP, it is my belief that it will take at least until the middle of July to complete the review of OrbCare's financial data and available records. Continuous discussions with the management personnel in place at those times

are ongoing and necessary to attempt to arrive at proper conclusions about how OrbCare's financial records should be presented.

37. In the days following the filing of the NOI, OrbCare provided all the information required by the Trustee for the Trustee to prepare a prospective 13-week cash flow statement (the "**Cash Flow Statement**") of OrbCare from June 1, 2019. A copy of the Cash Flow Statement is attached hereto as **Exhibit E**.
38. The following material steps, among others, are to begin shortly or are ongoing:
 - a. repairing the deficient bookkeeping and preparing accurate financial records of Orbcare for the fiscal year ending December 31, 2018;
 - b. preparing and filing the Harmonized Sales Tax report of OrbCare for the period ending December 31, 2018;
 - c. preparing and filing all income tax return documentation for the fiscal year ending December 31, 2018;
 - d. engaging MNP to review OrbCare's procedures and history for the release of company funds;
 - e. responding to a CRA informal audit regarding mandatory payroll remittances for the years 2018 and 2019, as defined in conversations between the Trustee, Orbcare's controller, myself and CRA representatives;
 - f. resolving differences with the CRA regarding the 2017 income tax return;
 - g. resolving differences with the CRA regarding the amount of entitlement to the 2016 Scientific Research and Experimental Development ("**SR&ED**") tax incentive program, so as to qualify for SR&ED credits and unlock net operating losses for 2016 which can offset future amounts payable to the CRA; and

- h. resolving differences with the CRA regarding the amount of entitlement to the 2015 SR&ED, so as to qualify for SR&ED credits.
39. Notwithstanding the gaps in information about OrbCare's position prior to the filing of the NOI, I believe that OrbCare will likely be able to make a viable proposal to its creditors for the following reasons:
- a. OrbCare operates in a business (software and health-related IT services) with, typically, healthy profit margins;
 - b. OrbCare, Pariscribe and OrbUS have paying and satisfied customers. I am confident about the quality of OrbCare's solutions and OrbCare's potential to maintain actual clients and attract new business; and
 - c. as more fully recounted below, OrbCare's preferred shareholder, iGan, has expressed confidence in OrbCare's value and has accordingly offered to advance loans to OrbCare during its restructuring process in order to provide working capital to keep OrbCare as a going concern and to pay restructuring costs; and
 - d. iGan has similarly expressed an interest in acting as a plan sponsor for any proposal that OrbCare makes.
40. I believe that with appropriate focus on streamlining of expenses, including a reduction in employee headcount that has already taken place, OrbCare's revenues are likely, over time, to exceed its going concern expenses such that, but for its accumulated debts that are principally to the CRA, OrbCare would be solvent in the normal course of business. I accordingly believe that, following the one time event of restructuring expenses, the NOI process and a proposal to creditors will allow OrbCare to remain a going concern, to the benefit of all its stakeholders including its employees, shareholders and creditors, and that its prospects through continued operation will likely afford greater recovery to creditors than in a liquidation scenario.

III. APPROVAL OF CREDIT FACILITY AND DIP LENDER'S CHARGE

41. As more fully appears from the Cash Flow Statement, OrbCare will lack liquidity to fund its essential business activities within 13 weeks from June 1, 2019.
42. The deficiency in the cash flow is expected even after the following cost-cutting and regularizing measures were implemented:
 - a. 4 unessential employees were terminated on or around the NOI filing date;
 - b. OrbCare and the Trustee are working together and diligently to invoice clients and collect accounts receivable;
 - c. OrbCare's sales team is hard at work trying to detect potential business openings; and
 - d. generally, myself and the majority of OrbCare's management are refocussing efforts to improve OrbCare's operations, sales and delivery in order to demonstrate to clients that OrbCare remains a viable and worthwhile provider of services.
43. In light of the anticipated cash flow deficiency, OrbCare, iGan, Pariscribe and OrbUS have initiated negotiations towards the DIP Term Sheet, in which iGan will loan money to OrbCare in a nonrevolving credit facility. The DIP Term Sheet is conditional on OrbCare obtaining from this Court an order approving such a loan and granting a first-ranking charge in favour of the DIP Lender securing the performance of OrbCare's obligations towards the DIP Lender under the DIP Term Sheet. A copy of the DIP Term Sheet is attached hereto for convenience as **Exhibit F**.
44. Prior to signing the DIP Term sheet, OrbCare entertained brief discussions with a possible alternative lender (who is an affiliate of the DIP Lender) regarding a financing opportunity. Given the emergency and the lack of available information, the discussions

with the alternative lender were not fruitful and no alternative financing proposal was received.

45. The DIP Term Sheet was reviewed by the Trustee, legal counsel to OrbCare and independent legal counsel to OrbCare's common shareholders. OrbCare's board of directors considered whether to authorize OrbCare to enter into the Credit Facility, including the lack of any known viable alternate lenders, particularly because OrbCare does not presently have any lenders for either operating expenses or long-term debt. The DIP Term Sheet was the product of negotiation with iGan and its counsel, and OrbCare's board of directors concluded that signing it and seeking the Court's approval for that loan and charge was in the best interests of the company and all of its stakeholders.
46. Following this:
 - a. subject to this Court's approval, OrbCare was authorized to enter into and perform its obligations under the Credit Facility; and
 - b. OrbCare was authorized to apply to this Court for an order declaring that OrbCare's property is subject to the DIP Lender's Charge.
47. Based on my experience and the advice I received from the Trustee and OrbCare's legal counsel, in relation to the DIP Term Sheet and the Credit Facility:
 - a. the \$1,200,000 maximum available loan amount is intended to (i) allow the company to fund its essential business activities through the NOI process and (ii) possibly sponsor a viable proposal, i.e. offer creditors satisfactory recovery and provide for payment of priority Crown debits;
 - b. the \$25,000 fees are moderate and in proportion with the maximum available loan amount;
 - c. the 10% interest rate is not out of the ordinary for a financing facility of this nature; and

- d. the other terms in general, including the lack of equity incentives or prepayment premiums in favour of the DIP Lender, make the facility attractive in the circumstances.
48. In discussions with the Trustee about the proposed DIP Term Sheet and DIP Lender's Charge, I understand that it has expressed the view that, while a \$1.2 million facility may be useful for OrbCare's cash flow needs while it proceeds through the NOI process, this amount is larger than the current projected cash flow deficiency.
49. It has always been OrbCare's intention to only borrow the amounts necessary in order to maintain its going concern business. As a result, counsel for OrbCare has discussed with the Trustee that borrowings under the DIP Term Sheet (which are to be done in \$100,000 increments) should be done only with the consent of the Trustee in order to ensure that the interests of all stakeholders are being considered, which OrbCare supports I am advised by iGan that it also supports that approach.

IV. SECURED CREDITORS

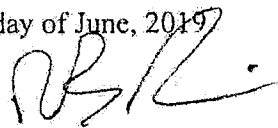
50. OrbCare currently has no operating lender or bank as creditor.
51. The total amounts that OrbCare owes to CRA in unpaid source deductions, HST remittances and corporate income tax may be estimated between \$500,000 and \$850,000.
52. According to *Personal Property and Security Act* ("PPSA") searches:
- a. there is no PPSA search result returnable for VConsult Services Inc.;
 - b. OrbCare has no registered secured creditor; and

c. Pariscribe has only two registered secured creditors, being Mr. Emmanuel Abraham, who is a former director of Pariscribe and a current director of OrbCare, and Mr. Dejan Dimitrijevic, who is a director of Pariscribe, a former shareholder of Pariscribe and a current shareholder of OrbCare:

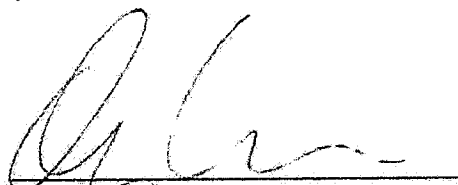
the whole are more fully appears from a copy of the PPSA searches attached hereto collectively as **Exhibit G**.

53. Therefore, I believe that no secured creditor would be materially prejudiced by the DIP Lender's Charge and that any prejudice possibly created thereby is lesser than the prejudice that would result from OrbCare's inability to finance its essential business activities and an eventual resulting bankruptcy.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 23rd day of June, 2019



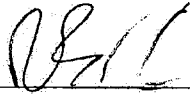
Commissioner for taking affidavits
R. B. Bissell



Olivier Giner

TAB B

This is **Exhibit "B"** to the
Affidavit of Olivier Giner,
sworn before me this 3rd day
of August, 2019



A Commissioner, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE INC., A
CORPORATION INCORPORATED UNDER THE *CANADA
BUSINESS CORPORATIONS ACT*

AFFIDAVIT OF OLIVIER GINER
(sworn July 29, 2019)

I, Olivier Giner, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. This affidavit is in support of:
 - (i) a motion made by OrbCare Inc. (“OrbCare”) for an order (i) extending from August 12, 2019 to September 26, 2019 the time for MNP Ltd. in its capacity as proposal trustee (“MNP” or the “Trustee”) to file with the official receiver a proposal pursuant to the *Bankruptcy and Insolvency Act* (the “BIA”) on behalf of OrbCare,
 - (ii) a motion by OrbCare for an Order procedurally consolidating the proposal proceedings of OrbCare with those of its wholly owned subsidiaries, Pariscribe Inc. (“Pariscribe”) and OrbCare US, Inc. (“OrbCare US”) (collectively with OrbCare, the “Companies”), and
 - (iii) a motion by Pariscribe and OrbCare US for authorization to borrow funds under a DIP Term Sheet.

2. I am the Chief Executive Officer and a director of each of the Companies and have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of

information, I have specifically referred to such sources and verily believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisers of the Companies and other members of the management teams of the Companies.

3. I became a director of OrbCare on September 13, 2018. On April 9, 2019 I signed an employment contract to become Chief Operating Officer (“COO”) of OrbCare starting on July 1st, 2019, and to work primarily in accounting and operations management. Despite the purported effective date of July 1st, due to the emergency of certain accounting and operating matters, it was agreed that I would commence working as COO of OrbCare immediately, but as a contractor, from April 9, 2019 to June 30, 2019, inclusively. I was subsequently appointed by the board of directors of OrbCare as Chief Executive Officer (“CEO”) and COO of OrbCare on May 17, 2019. On the same day, I was appointed a director of each of Pariscribe and OrbCare US, and also the CEO of each of Pariscribe and OrbCare US.

4. Before becoming a director of OrbCare, I was an employee (Vice-President and Chief Compliance Officer) of iGan Partners Inc. (“iGan”) and it was as a representative of iGan that I initially became a director of OrbCare on September 13, 2018. On March 10, 2019 I notified iGan that I wished to pursue other interests, which led to my joining OrbCare as COO in April 2019. It was nonetheless agreed that I would continue to serve as the Chief Compliance Officer of iGan, on an interim basis, either until a replacement was found or until August 31, 2019, whichever comes first. That role requires me to ensure compliance for investors providing funds to iGan and does not involve me in any of iGan’s activities or investments, such as with OrbCare.

OVERVIEW OF THE COMPANIES

5. OrbCare has the following wholly owned subsidiary corporations:
- a. Pariscribe, which is incorporated pursuant to the *Canada Business Corporations Act* and which operates in the same business as OrbCare, and has 19 clients (additional to OrbCare’s own clients); and
 - b. OrbCare US, 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, and has 6 clients (additional to OrbCare's and Pariscribe's own clients).

6. OrbCare, OrbCare US and Pariscribe operate a collective and intertwined business (the "**Business**") which consists primarily in providing a range of software information technology (IT) solutions to clients operating in the healthcare sector in Canada and the United States, including specialty clinics such as radiology clinics, fertility clinics, and mental health clinics.

7. The senior management for all of the Companies is in Toronto. All of the directors of the Companies are Canadians resident in Toronto.

8. In operating the Business, the Companies share from time to time among other things clients, opportunities, suppliers, employees and other assets.

9. Together, the Companies count 37 active clients and employ 25 employees and 2 contractors.

10. Pariscribe has no employees and has no leased premises. It effectively operates using the employees, premises and other overhead of OrbCare. Pariscribe and OrbCare carry on the same business but do so for different clients. This is because there are clients who initially started with Pariscribe and therefore continue to deal with Pariscribe as a legacy issue. There is not presently any cost-sharing mechanism between OrbCare and Pariscribe.

11. OrbCare US does have three employees of its own, located in North Carolina, in the United States. The former President of OrbCare US was based in Colorado and rented part-time premises from a space-sharing company (Regus) in Colorado Springs, Colorado, and that location is still recorded as the head office. Following the departure of the President of OrbCare US in late 2018, the controller for OrbCare opened a post office box in Ogdensburg, New York state and a bank account in Watertown, New York for OrbCare US, as those locations are the nearest to the controller of OrbCare who lives in Ottawa, ON and travels to the US once a month for banking operations. At the time of the sudden departure of the former President of OrbCare US, a decision was made to maintain a US bank account, principally because the payroll service used by OrbCare US (Gusto) would not do business with a Canadian banking institution. The new management of

OrbCare US has decided to open another bank account for OrbCare US in Toronto, which is being ^{attached} done today (July 29, 2019). OrbCare US has no independent management, accounting or human resources functions, and instead relies upon OrbCare for all of those functions. OrbCare employees in Toronto also provide some services that are part of OrbCare US's core business, including providing some of the help desk functions and the software engineering for American clients. New management of OrbCare US is evaluating how to expand US operations and it is currently planned that Canadian employees will lead business development in the US. D.G.
N.B.

12. OrbCare has no known conventional secured creditors. Aside from trade payables, there are priority payables in favour of Canada Revenue Agency ("CRA") for source deduction arrears in an amount currently estimated as \$511,323 and for unremitted HST in an amount currently estimated at \$84,485.

13. OrbCare US has no known secured creditors.

14. Pariscribe has two registered secured creditors, Emmanuel Abraham (who was formerly a director of Pariscribe) and Dejan Dimitrijevic (who is currently a director of Pariscribe and was formerly a shareholder of Pariscribe), who are employees of OrbCare (and previously of Pariscribe), as indicated in the *Personal Property Security Act* search results, a copy of which are attached as **Exhibit A**. It is unknown if those registrations are still valid or may be legacy issues from a prior structure of OrbCare and Pariscribe. Additionally, Pariscribe has priority payables in favour of CRA for source deduction arrears in an amount currently estimated at \$70,040.

CAUSES OF INSOLVENCY AND GENERAL SITUATION OF ORBCARE: A SUMMARY

15. I have recounted in detail the facts surrounding the discovery and the causes of OrbCare's insolvency in my affidavit dated June 23, 2019 filed in the present Court file in support of OrbCare's previous Motion for Extension of Time to File a Proposal and Approval of DIP Financing which was granted by order of Justice Hainey of the Ontario Superior Court of Justice on June 25, 2019. A copy of that June 23, 2019 affidavit is communicated herewith for convenience, without the exhibits, as **Exhibit B**. I hereafter provide a summary thereof.

16. All of the Companies are insolvent and each has filed a notice of intention to make a proposal (an "NOI") under what I understand to be Section 50.4 of the BIA to which the Trustee accepted to act as proposal trustee:

- a. in the case of OrbCare, on May 28, 2019, as appears from a copy of the Certificate of Filing of OrbCare's NOI attached hereto as **Exhibit C**;
- b. in the case of Pariscribe, on July 26, 2019, as appears from a copy of the Certificate of Filing of Pariscribe's NOI attached hereto as **Exhibit D**; and
- c. in the case of OrbCare US, on July 29, 2019, as appears from a copy of the Certificate of Filing of OrbCare US's NOI attached hereto as respectively **E**.

17. Shortly after I started being directly involved in OrbCare as COO in May of 2019 I started an initial review of a selection of OrbCare's bank account and other financial records, and through conversations with OrbCare's controller and other employees, I noted that, among other things:

- a. OrbCare may not have had sufficient record keeping or controls on the use or release of company funds;
- b. OrbCare had not prepared any form of financial statements since the filing of its revised annual income tax return filed with the CRA for the year ending December 31, 2017;
- c. OrbCare did not maintain adequate customer records and did not diligently keep track of customer invoicing and accounts receivable. I learned, for example, that certain entities which I had been told were current customers of OrbCare had in fact never been customers, or ceased to be customers of OrbCare or any of its subsidiaries;
- d. OrbCare's Quickbooks accounting records appeared dated and incomplete, including an apparent backlog of thousands of accounting entries that, to such date, had yet to be entered into its books;

- e. OrbCare may have been liable for significant payable and unpaid debt towards its creditors, including the CRA; and
- f. OrbCare's accounts payable may have been in excess of its cash reserves such that OrbCare had a much shorter operating runway than expected.

18. On May 17, 2019, the board of directors of OrbCare resolved to make changes in the management of OrbCare, including the removal of the prior Chief Executive Officer and my appointment as Chief Operating Officer of OrbCare and Chief Executive Officer of the Companies, with the intention to attempt to stabilize the operational and cashflow situation of the Companies as well as continue to review the actual financial reality of the Companies.

19. On or around May 23, 2019, I had come to the following factual conclusions:

- a. OrbCare's gross revenue per month was not in the range of \$300,000 as had been previously reported, but was closer to \$150,000 per month (including US operations);
- b. monthly expenses were in the range of \$260,000 per month (including US Operations);
- c. cash balances, which were expected to be substantial after a relatively recent, September 13, 2018 \$2M preferred share financing, were significantly lower than expected;
- d. there were significant amounts owing to the CRA, including an amount in excess of \$500,000 for unpaid payroll source contributions, as well as amounts for HST and corporate tax which remained to be precisely calculated by reason of OrbCare's incomplete record keeping; and
- e. the CRA had previously taken collection steps on account of unpaid amounts due in 2018 through the garnishment of OrbCare's bank accounts;

all of which led me to believe that:

- f. OrbCare's costs of operation were too high, notably due to an unnecessarily large number of employees;
- g. OrbCare would probably lack liquidity to fund its essential business activities within two months; and
- h. OrbCare was at risk of imminent further CRA collection efforts, which would impair or cease OrbCare's ability to continue as a going concern.

20. On or around May 27, 2019, after obtaining advice from OrbCare's legal counsel and the Trustee, OrbCare's board of directors, including myself, came to the conclusion that by reason of accumulated debt, OrbCare was insolvent and would have to negotiate with its creditors and put forward a proposal to permit maximum recovery and minimum alteration of the creditors' rights while ensuring the continuation of the Business for the benefit of all its stakeholders including its employees, shareholders and creditors.

21. On May 28, 2019, OrbCare accordingly filed an NOI under what I understand to be Section 50.4 of the BIA.

22. Pariscribe and OrbCare US did not initially file NOI's at the same time as OrbCare. This was a conscious decision because it was not known in May of 2019 what the proper financial status of those two companies was due to the gaps in the Companies' accounting practices and records. Since there was at that time no known creditor issue for Pariscribe that could jeopardize operations, the board of Pariscribe decided to defer any decision to file a NOI until a later time. As for Orbcare US, the amounts due to third party suppliers were grossly underestimated at such time, and as the company was looking to attempt to manage its payables, the board of Orbcare US decided to defer the decision to file a NOI as well.

23. Since May, I have determined that each of Pariscribe and OrbCare US have known or potential liabilities that they are not presently able to pay, and which, if subject to action by the creditors in question, could imperil the going concern nature of their businesses.

24. In particular, it came to my attention for the first time on June 21, 2019 that Pariscribe has been distributing a third party picture archiving and communication system (PACS) known as NILReader, and that Pariscribe may have failed to meet its obligations under a distribution agreement dated November 13, 2014 between Pariscribe and Claron Technology regarding the NILReader (“**Distribution Agreement**”). The imaging technology of Claron Technology (including the NILReader) was sold to Lexmark in 2015, and the technology was later sold to Hyland Corporation in 2017. The obligations of the parties under the Distribution Agreement may have been neglected from both parties to the agreement, as to my knowledge Pariscribe may have failed to pay any amounts to Claron (now Hyland) and Hyland may have also failed to provide the technical and customer support required under the Distribution Agreement. At this point I am unable to quantify the extent of the potential liability from Pariscribe to Hyland. I initiated contact with Hyland on July 26th, 2019 in an attempt to clarify the relationship and respective obligations of the parties. The Company has also been in discussions with alternative PACS suppliers in order to potentially replace the NILRead PACS installed with current clients and provide a different solution to new clients.

25. As for OrbCare US, it owes arrears of at least USD \$246,695 to three major suppliers of technology under license and services including computer servers. This amount does not include arrears for the second quarter of 2019 which invoices are expected to be received imminently. Some of these payables are nearly 290 days overdue and the discussions with the suppliers for the collection of these amounts have intensified in recent weeks, and the amounts the suppliers want to be paid exceed by far Orbcare US cash reserves even when including cash flow from near term operations.

EXTENSION OF TIME TO FILE A PROPOSAL AND STEPS UNDERTAKEN BY THE COMPANIES

26. OrbCare has already sought and received one extension of the time to make a proposal in its motion that was heard on June 25, 2019. A copy of the Order of Mr. Justice Hainey of that date is attached as **Exhibit F**. The current deadline for OrbCare to make a proposal is now August 12, 2019.

27. OrbCare seeks an extension of a further 45 days for the time for it to make a proposal to September 26, 2019, and Parsicribre and OrbCare US seek lesser extensions to the same date so that further motions regarding the Companies may be done all at the same time and to allow the Companies to consider an appropriate global restructuring strategy.

28. I believe that the Companies have acted in good faith and with due diligence before the filing of their NOI's in order to regularize their financial situation. I believe they have continued to do so since then, as detailed below.

29. Since before the filing of its NOI and thereafter, OrbCare has worked actively with MNP LLP and Vizhenbooks, a service company specialized in assisting other companies regarding bookkeeping, in order to redress the financial reporting for all the Companies and put forward a viable proposal to creditors. This has included the retainer of the forensic accounting services of MNP LLP to assist in the review of the Companies financial data and available records in order to attempt to properly state the financial records and position of the Companies, among other things. At the time of OrbCare's last stay extension motion on June 25, I indicated that work had been completed for the months of September of 2018 to April 2019, and the review for the months of January to August 2018 was still ongoing. The review of the Companies' books and records has now been substantially completed for all of 2018 and 2019 to date, especially from a profit and loss perspective. The Companies are still looking to finalize certain balance sheet items that are dependent on certain December 31, 2017 balances that were not provided with enough details. The ongoing review of the books and records and other financial activities since May 28, 2019 have enabled us to identify additional creditors of OrbCare, which were since given notice of OrbCare's NOI.

30. Since my affidavit in support of the June 25, 2019 extension, the following steps have been taken:

- a. working versions of the financial statements for OrbCare, Pariscrite and OrbCare US have been prepared for the period ending December 31, 2018 (Pariscrite's fiscal year end is October 31) and for the first five months of

2019 to the end of May, but which remain subject to change as further accounting information is analyzed;

- b. the HST liabilities for OrbCare and Pariscribe have been better quantified;
- c. the payroll source deduction obligations for OrbCare and Pariscribe have been better quantified;
- d. it has been determined that each of OrbCare and Pariscribe has experienced a deficit for its fiscal year ending in 2018, such that no income tax will be payable by either of them for its fiscal year ending in 2018;
- e. accounts receivable in the total amount of \$89,962 have been collected for OrbCare and Pariscribe;
- f. The Companies have engaged with possible new client opportunities, some of them with substantial revenue potential;
- g. one sales employee has been terminated and a new software engineer has been engaged to assist with client issues;
- h. MNP has continued to review OrbCare's procedures and history for the release of company funds, including the handling of funds by the former Chief Executive Officer and transactions between him and the Companies and whether those matters may warrant a request for repayment; and
- i. the CRA issued a review letter on July 17, 2019 regarding OrbCare's entitlement to Scientific Research and Experimental Development ("SR&ED") tax credits for the fiscal years ending 2015 and 2016. The CRA established that the Company was eligible to a total ITC claim of \$2,552 for the years ending December 31, 2015 and 2016. The CRA also established that the Company had total Net Losses in excess of \$175,000 for years ending December 31, 2015 and 2016 – while the findings are disappointing, the Company does not intend to object to the findings by the CRA since the

records available in support of the SR&ED claims for those years are insufficient, and the Company has dedicated abundant resources already trying to amend previous filings made by previous SR&ED consultants, which contained erroneous descriptions of the activities carried and insufficient supporting data; furthermore, the Company wants to take advantage of the Net Losses in order to offset corporate income taxes due for the year ending December 31, 2017.

31. OrbCare has also prepared an updated 13-week cashflow statement, a copy of which is attached as **Exhibit G**, and which is consolidated with the operations of Pariscribe due to their intertwined nature. A similar cash flow statement for Pariscribe will be filed within the required 10 day period after the filing of its NOI, and a separate cash flow statement is being prepared for OrbCare US to also be filed within the required 10 day period after filing of its NOI

FURTHER ANTICIPATED STEPS IN THE RESTRUCTURING OF THE COMPANIES AND ABILITY TO MAKE A PROPOSAL

32. With the growing certainty about the financial position of the Companies, I continue to believe that the Companies will likely be able to make a viable proposal to its creditors for the following reasons:

- a. the Companies operate in a business (software and health-related IT services) with, typically, healthy profit margins;
- b. the nature of the Companies' business means that they will provide far more value to creditors as a going concern than in a liquidation scenario;
- c. OrbCare and its subsidiaries have paying and satisfied customers. I am confident about the quality of OrbCare's solutions and OrbCare's potential to maintain actual clients and attract new business: as mentioned above, OrbCare has engaged with possible new client opportunities, some of them with substantial revenue potential;

- d. OrbCare's preferred shareholder and current DIP lender, iGan Partners Inc. ("iGan"), has expressed confidence in OrbCare's value and has accordingly offered to advance DIP financing to OrbCare during its restructuring process in order to provide working capital to keep OrbCare as a going concern and to pay restructuring costs;
- e. iGan has expressed an interest in acting as a plan sponsor for any proposal that OrbCare makes; and
- f. the Companies have received several expressions of interest in either or both of an investment in the Companies or a sale of the Companies' assets, the proceeds of which could fund a viable proposal.

33. The Companies have begun the process of considering, with the assistance of counsel and of the Trustee, whether value for creditors and the interests of stakeholders more widely (including customers, suppliers, and employees) might be preserved or enhanced through a sales process to solicit interest in investments and/or purchases of the Companies' assets. The Companies have begun discussions with a potential purchaser of all of their assets who is prepared to act as a stalking horse bidder.

34. The Companies intend to return to Court within the period of the next stay extension to seek authorization for a sale and investment solicitation process, whether through the vehicle of a stalking horse agreement or otherwise.

35. The Companies intend to complete any transaction(s) that may come out of a sales process within the statutory 180 day maximum period for an NOI process after which a proposal to creditors is required.

EXPANSION OF DIP BORROWING TO PARISCRIBE AND ORBCARE US

36. OrbCare already sought and received Court approval to enter into a credit facility with iGan under a DIP Term Sheet, a copy of which is attached as **Exhibit H**. The Order of Mr. Justice Hainey dated June 25, 2019 granted that approval.

37. As noted in my prior affidavit, the existing DIP Term Sheet had been reviewed by the Trustee, legal counsel to OrbCare and independent legal counsel to OrbCare's common shareholders. OrbCare's board of directors considered whether to authorize OrbCare to enter into the Credit Facility, including the lack of any known viable alternate lenders, particularly because OrbCare did not have any lenders for either operating expenses or long-term debt. The DIP Term Sheet was the product of negotiation with iGan and its counsel, and OrbCare's board of directors concluded that signing it and seeking the Court's approval for that loan and charge was in the best interests of the company and all of its stakeholders.

38. There have not yet been any draws against that credit facility, but OrbCare needs to borrow funds against that facility imminently in order to pay professional restructuring costs and to ensure that the Companies will be in a position to make payroll for the time following August 1, 2019.

39. The existing DIP Term Sheet required Pariscribe and OrbCare US to be guarantors and to grant security in favour of iGan. At that time those companies had not filed their NOI's.

40. Since Pariscribe and OrbCare US have now filed NOI's, I am advised by counsel for the Companies and the Trustee that it would be more proper for Pariscribe and OrbCare US to use any DIP loan funds as principal borrowers.

41. I am also advised by counsel for the Companies that iGan has requested this before it will be prepared to advance funds under the DIP Term Sheet, and that iGan requires that the Companies cross-guarantee their obligations as a term of the loan.


42. I expect that most of the borrowing will be done by OrbCare, because it provides the head office management and other services to the Companies. I believe that if OrbCare does not have access to DIP lending, then it will be unable to stay in operation, which would effectively mean that Pariscribe and OrbCare US would cease business as well. On that basis, I believe that it is appropriate and in the best interests of the creditors and stakeholders of Pariscribe and OrbCare US that those two companies be guarantors of the debts of OrbCare.

43. Attached as **Exhibit I** is a copy of Amended and Restated DIP Loan Term Sheet that iGan has offered to the Companies.


44. Messrs. Abraham and Dimitrijevic, who have PPSA registrations against Pariscribe, were aware of OrbCare's execution of the first DIP Term Sheet, including iGan's request that Pariscribe guarantee the obligation of OrbCare under that first version, because Mr. Abraham is a director of OrbCare and Mr. Dimitrijevic also participated in a discussion among management on that topic. Both of them were also given formal notice of OrbCare's request for Court approval for the first DIP Term Sheet as Goodmans LLP, who acted as counsel for the common shareholders of OrbCare who include them, was served. Messrs. Abraham and Dimitrijevic are being served directly with this motion now out of an abundance of caution.

45. The Amended and Restated DIP Loan Term Sheet also has a new provision in it pertaining to an event of default if the Companies do not commence a sale process that is satisfactory to iGan before August 15, 2019. That is a new term that was just received from iGan today, and which the boards of directors of the respective Companies have not yet considered or authorized. There will be a meeting of the boards of directors on the afternoon of Wednesday July 31, 2019 to consider and, if appropriate, agree to that provision as part of the Amended and Restated DIP Loan Term Sheet.

SWORN BEFORE ME at the City of
 Toronto, in the Province of Ontario, this
 29th day of July, 2019



 Commissioner for taking affidavits
 R. B. Bissell



 Olivier Giner

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF ORBCARE INC., A CORPORATION
INCORPORATED UNDER THE CANADA BUSINESS
CORPORATIONS ACT**

Estate File No. 31-2516167

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced in TORONTO

AFFIDAVIT OF OLIVIER GINER
(sworn July 29, 2019)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for OrbCare Inc., Pariscribe Inc. and
OrbCare US, Inc.

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

Estate File No. 31-2516167

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

AFFIDAVIT OF OLIVIER GINER
(sworn August 3, 2019)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsrh.com

Lawyers for OrbCare Inc., Pariscrcribe Inc. and
OrbCare US, Inc.

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TAB 3

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

THE HONOURABLE) WEDNESDAY, THE 14th
)
JUSTICE) DAY OF AUGUST, 2019
)

**IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE INC., AND
PARISCRIBE 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**

**ORDER
(Approval of Sale Process)**

THIS MOTION, made by Orbcare Inc., Pariscribe Inc. and Orbcare US, Inc. (collectively, the "**Companies**"), pursuant to Sections 50.4(9) and 64.2(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), for an order, among other things, approving a "stalking horse" sale process substantially on the terms set out in Schedule "A" hereto (the "**Sale Process**") in respect of the Companies and approving a stalking horse asset purchase agreement (the "**Stalking Horse APA**") between the Companies and iGan Partners Inc., in trust for a company to be incorporated ("**iGan**"), for the purposes of the Sale Process, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Companies, the third report of MNP Ltd., in its capacity as proposal trustee of the Companies (the "**Proposal Trustee**"), dated August 1, 2019 (the "**Third Report**") and the appendices thereto, the affidavit of Olivier Giner sworn August 3, 2019, and on hearing the submissions of counsel for the Companies, counsel for the Proposal

Trustee and counsel for iGan, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2019, filed:

SERVICE

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated and this Motion is properly returnable today.

APPROVAL OF SALE PROCESS AND STALKING HORSE APA

2. **THIS COURT ORDERS** that the Sale Process is hereby approved and the Trustee is hereby authorized and directed to take such steps as it deems necessary or advisable (subject to the terms of the Sale Process) to carry out the Sale Process, subject to prior approval of this Court being obtained before completion of any transaction(s) under the Sale Process.

3. **THIS COURT ORDERS** that the execution, delivery, entry into, compliance with, and performance by the Companies of the Stalking Horse APA be and is hereby ratified, authorized and approved.

4. **THIS COURT ORDERS** that the Break Fee set out in Section 6.4 of the Stalking Horse APA is approved and that the Stalking Horse APA is hereby approved solely for the purposes of standing as the Stalking Horse Bid in the Sale Process, provided that if iGan is the successful bidder under the Sale Process, implementation of the transaction contemplated by the Stalking Horse APA will be subject to the Court's approval upon further motion by the Companies.

5. **THIS COURT ORDERS** that the Companies and the Proposal Trustee their respective employees, advisors, agents or other representatives ("**Representatives**") shall have no personal or corporate liability in connection with the Sale Process.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Trustee, the Companies and their Representatives are hereby authorized and permitted to disclose and transfer to each potential bidder (the "**Bidders**") and to their Representatives, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and

payroll information in the Companies' records pertaining to the Companies' past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale pursuant to the Sale Process (a "Sale"). Each Bidder or Representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Trustee. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction(s) contemplated in the Winning Bid(s) (as defined in the Sale Process), shall be entitled to use the personal information provided to it that is related to the assets acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Trustee.

GENERAL

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Companies, the Proposal Trustee, iGan 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 Companies 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 Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

THIS COURT ORDERS that each of the Companies, the Proposal Trustee and iGan shall be at liberty and are 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.

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Schedule "A" – Sale Process

1. Definitions. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Stalking Horse APA.
2. Advertisement. Not later than five (5) Business Days after the Sale Process Order is granted, the Proposal Trustee shall advertise for sale the Purchased Assets in The Globe and Mail (National Edition) and distribute a teaser document to potential interested parties.
3. Due Diligence. Not later than five (5) Business Days after the Sale Process Order is granted, the Proposal Trustee shall make available to prospective purchasers (collectively, the "**Prospective Purchasers**"), upon receipt of an executed confidentiality agreement from a Prospective Purchaser, access to a data room containing information reasonably required by Prospective Purchasers to consider submitting an offer for the Purchased Assets and facilitate the conduct of due diligence by the Prospective Purchasers. The Purchaser may have access to the data room.
4. Bid Deadline. Any offers to purchase the Purchased Assets must be submitted in writing to and received by the Proposal Trustee at MNP Ltd., 300-111 Richmond Street West, Toronto, ON M5H 2G4, attention: Sheldon Title, or by email at sheldon.title@mnp.ca, by 5:00pm (Toronto time) on September 27, 2019 (the "**Bid Deadline**").
5. Qualified Bid. The Proposal Trustee in its sole discretion shall determine whether any offers are "**Qualified Bids**". A Qualified Bid shall mean an offer to purchase substantially all of the Purchased Assets which is substantially the same or better than the Agreement, provided that no offer shall qualify as a Qualified Bid unless it meets, among other things, the following minimum criteria:
 - i. the Prospective Purchaser and the representatives thereof who are authorized to appear and act on its behalf must be sufficiently identified and written evidence of the offeror's chief officer or other appropriate senior executive's approval of the contemplated transaction must be submitted with the offer;
 - ii. the offer must be submitted in writing and include a blackline of the offer to the Agreement, reflecting the Prospective Purchaser's proposed changes and a written commitment to close on the terms and conditions set forth therein;
 - iii. the offer must be accompanied by a deposit in the form of certified cheque payable to the Proposal Trustee which is equal to at least 10% of the aggregate purchase price payable under the offer;
 - iv. the offer must be open for acceptance by the Vendors until five (5) Business Days after the Auction (as hereinafter defined) or later;

- v. the offer must be on terms no less favourable and no more burdensome or conditional than the Agreement and shall not contain any provisions for a break fee or expense reimbursement;
 - vi. the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction that are not otherwise contained in the Agreement;
 - vii. the offer must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale with appropriate contact information for such financing sources; and
 - viii. the offer must be for a price equal to or greater than the sum of the Purchase Price, the Break Fee and \$50,000.
6. Auction. Only if the Proposal Trustee receives one or more Qualified Bids by the Bid Deadline, the Proposal Trustee shall extend invitations by phone, fax and/or email by 10:00 a.m. (Toronto time) on the third (3rd) Business Day after the Bid Deadline to all bidders who submitted Qualified Bids and to the Purchaser to attend an auction (the "**Auction**"). The Auction shall be held at 10:00 a.m. on the fifth (5th) Business Day after the Bid Deadline (or such other date and time as the Proposal Trustee may in its sole discretion designate) at the offices of the Proposal Trustee.
7. Conduct of the Auction. The Proposal Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$100,000, or such other amount as the Proposal Trustee determines to facilitate the Auction (the "**Incremental Amount**"). Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration. The format and procedure for the Auction shall be determined by the Proposal Trustee in its sole discretion.
8. Winning Bid. In its sole discretion and based, *inter alia*, on the conduct of the Auction, the total financial and contractual terms of the Qualified Bids and various factors relevant to the speed and certainty of completing the sale of the Purchased Assets, the Proposal Trustee shall determine and accept the highest and/or best bid with respect to the Purchased Assets (the "**Winning Bid**"), subject to Court approval.
9. Court Approval of the Winning Bid. The Vendors shall make a motion to the Court to obtain approval of the Winning Bid and the Approval and Vesting Order as expeditiously as possible after the Auction, but in no event longer than ten (10) Business Days following the Auction.
10. Court Approval of Agreement if no Qualified Bid. If no Qualified Bid is received by the Bid Deadline (other than the Agreement), the Auction will not be held. Accordingly, the Agreement will be the Winning Bid and the Vendors shall seek, as expeditiously as possible, approval of the Court to consummate the Transaction contemplated by the Agreement, but in no event longer than ten (10) Business Days following the expiry of the Bid Deadline.

11. Return of Deposits. The deposits submitted with all Qualified Bids (except the Winning Bid), shall be held in escrow by the Proposal Trustee until five (5) Business Days after the date of the completion of the Auction and returned to those Prospective Purchasers thereafter. If the Winning Bid terminates pursuant to its terms or fails to close because of the Vendors' breach or failure to perform under the terms of the Winning Bid, the Proposal Trustee shall return the deposit submitted with such bid to the bidder that submitted the Winning Bid (the "**Winning Bidder**") forthwith. If the Winning Bidder fails to complete the approved sale because of its breach or failure to perform under the terms of the Winning Bid, the Proposal Trustee shall not have any obligation to return the deposit submitted with the Winning Bid and such deposit shall be retained by the Proposal Trustee as liquidated damages and the Purchaser shall be entitled to submit a new bid for the Purchased Assets, which the Proposal Trustee shall be at liberty to but not obligated to, accept on terms to be agreed upon between the Parties.

12. Modifications. Subject to the Sale Process Order, the Proposal Trustee shall have the right to adopt such other rules for the Sale Process, that, in its sole discretion, will better promote the goals of the Sale Process.

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

Estate File No. 31-2516167

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

ORDER
(Approval of Sale Process)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for OrbCare Inc. Pariscrcribe Inc. and
OrbCare US, Inc.

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TAB 4

August 9, 2019

Estates No. 31-2516167

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

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE
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CORPORATION INCORPORATED UNDER THE LAWS OF THE
STATE OF DELAWARE IN THE UNITED STATES OF AMERICA**

SERVICE LIST

<p>GOLDMAN SLOAN NASH & HABER LLP 480 University Avenue, Suite 1600 Toronto (ON) M5G 1V2 Fax: 416.597.3370</p> <p>R. Brendan Bissell (LSO# 40354v) Tel: 416.597.6489 Email: bissell@gsnh.com</p> <p>Joël Turgeon Tel: 416.597.6486 Email: turgeon@gsnh.com</p> <p>Lawyers for OrbCare Inc., Pariscribe Inc. and OrbCare US, Inc.</p>	<p>MNP LTD. 111 Richmond Street West Toronto (ON) M5H 2G4 Fax: 416.323.5240</p> <p>Sheldon Title Tel: 416.263.6945 Email: sheldon.title@mnp.ca</p> <p>Proposal Trustee</p>
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<p>CHAITONS LLP 5000 Yonge Street, 10TH Floor Toronto (ON) M2N 7E9 Fax: 416.222.8402</p> <p>George Benchetrit Tel: 416.218.1141 Email: george@chaitons.com</p> <p>Lawyers for the Proposal Trustee</p>	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto (ON) M5K 0A1</p> <p>Kenneth Kraft Tel: 416.863.4374 Email: kenneth.kraft@dentons.com</p> <p>Mark Freake Tel: 416.863.4456 Email: mark.freake@dentons.com</p> <p>Lawyers for the DIP Lender, iGan Partners Inc.</p>
<p>GOODMANS LLP Bay Adelaide Centre – West Tower 333 Bay Street, Suite 3400 Toronto (ON) M5H 2S7</p> <p>Jamie Firsten Tel: 416.597.4103 Email: jfirsten@goodmans.ca</p> <p>Chris Payne Tel: 416.849.6918 Email: cpayne@goodmans.ca</p> <p>Independent Counsel for the Common Shareholders</p>	<p>CANADA REVENUE AGENCY 1 Front Street West Toronto (ON) M5J 2X6 Fax: 416.952.8726</p> <p>Diane Winters Tel: 416.973.3172 Email: diane.winters@justice.gc.ca</p> <p>Rakhee Bhandari Tel: 416.952.8563 Email: rakhee.bhandari@justice.gc.ca</p>
<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 777 Bay Street, 11th Floor Toronto (ON) M5G 2C8</p> <p>Kevin O’Hara Tel: 416.327.8463 Email: kevin.ohara@ontario.ca</p>	<p>MANNY ABRAHAM 2010 Eglinton Ave. West, Suite 300 Toronto, ON M6E 2K3</p> <p>Email: manny.abraham@orbcare.com</p> <p>Registered secured creditor of Pariscribe Inc.</p>

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DEJAN DIMITRIJEVIC

2010 Eglinton Ave. West, Suite 300
Toronto, ON M6E 2K3

Email: dejan.dimitrijevic@orbcare.com

Registered secured creditor of Pariscribe Inc.

EMAIL ADDRESS LIST

bissell@gsnh.com; turgeon@gsnh.com; sheldon.title@mnp.ca; george@chaitons.com;
kenneth.kraft@dentons.com; mark.freake@dentons.com; cpayne@goodmans.ca;
jfirsten@goodmans.ca; diane.winters@justice.gc.ca; rakhee.bhandari@justice.gc.ca;
kevin.ohara@ontario.ca; manny.abraham@orbcare.com; dejan.dimitrijevic@orbcare.com

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Estate File No. 31-2516167

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COMMERCIAL LIST
Proceeding commenced in TORONTO

MOTION RECORD
(returnable August 14, 2019)
(Approval of Sale Process)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for OrbCare Inc., Pariscribe Inc. and
OrbCare US, Inc.