

**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**

**THIRD REPORT TO THE COURT**

**AUGUST 9, 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**”). A copy of the NOI is attached hereto and marked as Exhibit “A”.
2. Notice of the NOI as prescribed by the BIA was sent on June 3, 2019 to all of Orbcare’s known creditors. A copy of such notice is attached hereto and marked as **Exhibit “B”**.
3. On June 22, 2019, Orbcare served 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**”), in connection with that motion. A copy of the First Report, without exhibits, is attached hereto and marked as **Exhibit “C”**.

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 Orbcare's assets, property and undertaking 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. Copies of each of the NOIs for Pariscribe and Orbcare US are attached hereto and marked as **Exhibit "D"** and **"E"**, respectively. 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's known creditors. Copies of the Pariscribe notice and the Orbcare US notice are attached hereto and marked as **Exhibit "F"** and **"G"** respectively.
7. On July 29, 2019, the Companies served Notices of Motion and Motions Record for motions returnable July 30, 2019, seeking, among other things, orders: (i) extending the time within which the Companies had to file proposals; (ii) authorizing Orbcare to sign an Amended and Restated DIP Term Sheet; 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**"), in connection with that motion. A copy of the Second Report, without exhibits, is attached hereto and marked as **Exhibit "H"**.

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;
  - 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 for administrative purposes such that a single court file number and title of proceeding shall be used (the “**Procedural Consolidation Order**”).
10. Information regarding the NOI proceeding has 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 will also be used for Pariscribe and Orbcare US.
11. 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

12. 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.

13. 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.

### III. PURPOSE OF THIS REPORT

14. The purpose of this report is to provide the Court with the Proposal Trustee's recommendation for an order, *inter alia*, authorizing and directing the Proposal Trustee, in consultation with the Companies, to carry out a "stalking horse" marketing and sale process for all the assets of the Companies as described below (the "**Sale Process**"), using the 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 (in such capacity, the "**Stalking Horse Bidder**" or the "**Purchaser**") in respect of all of the properties, assets and undertakings of the Companies to be used as the stalking horse bid.
15. All dollar references herein are in CDN\$ unless otherwise specified.

#### IV. BACKGROUND INFORMATION

16. 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.
17. The affidavits of Olivier Giner sworn June 23, 2019 and July 29, 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.
18. 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

19. To date, the Companies have provided the Proposal Trustee with their full co-operation and unrestricted access to their premises, and books and records.
20. On June 7, 2019, Orbcare filed a projected cash flow statement, which was reviewed by the Proposal Trustee for reasonableness and signed by the Proposal Trustee and Orbcare (the “**Cash Flow Projections**”). A copy of the Cash Flow Projections, and related reports, were appended to the First Report.

21. 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 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 Cash Flow Projections were prepared using the probable and hypothetical assumptions set out in the notes attached to the Revised Cash Flow Projections.
22. 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 the duplicate with the Official Receiver on July 29, 2019 for the NOI filing of Pariscribe.
23. 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 projected cash flow statement, 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, is attached hereto as **Exhibit "I"**.
24. The principal assumptions of the Orbcare US Cash Flow Projections include:
  - a. the forecasted collection of post-NOI sales is within 60 days from the completion of the sale and the sales are based on management's best estimate;
  - b. the number of employees and associated payroll costs are based on the 'actual' payroll costs prior to the NOI;
  - c. expenses for certain technologies, such as cloud computing, server storage and data transfer, are incurred based on the usage of such technologies. Costs in relation to the usage of these technologies are estimated by management to be incurred at similar usage rates as experienced in the month prior to the NOI filing;

- d. management has estimated the net amount of accounts receivables that are expected as collectible and the collection of such receivables are forecast over a 13-week period;
  - e. operating expenses are assumed to be paid on a current basis;
  - f. the projections exclude any activity of Orbcare and Pariscribe; and
  - g. other disbursements are based on management's best estimates.
25. Based on the Proposal Trustee's review of the Orbcare US Cash Flow Projections, there are no material assumptions which seem unreasonable in Orbcare US's circumstances or are inconsistent with the purpose of the projections. Based on the Orbcare US Cash Flow Projections, Orbcare US will have sufficient funding through to the end of the requested extension of the NOI.
26. The Proposal Trustee has implemented procedures for monitoring the Companies' receipts and disbursements and has kept in close contact with the Companies' management to ensure that operations are continuing in the normal course of business and in accordance with the Revised Cash Flow Projections and the Orbcare US Cash Flow Projections.
27. Notwithstanding the concerns about the quality of the historic financial information, the Companies' management appears able to reasonably estimate its operation expenses.

## **VI. CREDIT FACILITY**

28. Pursuant to the Credit Facility Extension Order, the Companies were authorized to obtain and borrow under the Credit Facility from the DIP Lender on the terms of the Amended and Restated DIP Term Sheet.
29. As a condition of the Amended and Restated DIP Term Sheet, authorization of the Proposal Trustee is required prior to any drawdown of the \$1.2MM Credit Facility by the Companies.

30. The Proposal Trustee provided its first and only authorization of a drawdown of \$225,000 from the Credit Facility on August 2, 2019. Attached hereto as **Exhibit “J”** is a copy of the authorization provided to the Companies by the Proposal Trustee.
31. On August 8, 2019, the Companies requested from the DIP Lender an amount of \$225,000 in the form of a drawdown from the Credit Facility (the “**First Credit Facility Draw**”).

## **VII. SALE PROCESS**

### *Stalking Horse APA*

32. The Stalking Horse Bidder has submitted an offer to purchase the right, title and interest of the Companies’, if any, in and to all of the properties, assets and undertakings of the Companies (collectively, the “**Purchased Assets**”) for the sum of \$1,200,000 (the “**Purchase Price**”) comprised of:
  - a. a credit bid equal to the amounts owing by the Companies to the Stalking Horse Bidder under the Credit Facility as of the time of the closing of the transaction contemplated by the Sale Process (the “**Credit Bid**”); and
  - b. cash consideration in an amount equal to the difference between the amount of the Credit Bid and \$1,200,000, less Assumed Liabilities (as defined in the Stalking Horse APA).

A copy of the Stalking Horse APA is attached as **Exhibit “K”**.

33. The Stalking Horse APA remains subject to Court approval and the Proposal Trustee not receiving a better offer through the Sale Process as contemplated below. The Sale Process aims to preserve the ongoing business of the Companies, while seeking to identify third party bidders for amounts higher than the Purchase Price.
34. A summary of the other key terms and conditions of the Stalking Horse APA are as follows:
  - a. representations and warranties are consistent with insolvency transactions, i.e. the transaction is to be completed on an “as is, where is” basis without material representations and warranties;



- b. the only significant condition is the granting of an approval and vesting order vesting title in and to the Purchaser free and clear of all encumbrances, except any permitted encumbrances; and
- c. a break fee of \$60,000, being 5% of the Purchase Price (the “**Break Fee**”), shall be payable upon the closing of a sale and transfer, or a series of sales and transfers, of substantially all the Purchased Assets to one of more third parties other than the Stalking Horse Bidder.

***Sale Process***

35. The Sale Process is summarized below, and is described at Schedule “G” to the Stalking Horse APA. Capitalized terms used in this section and not otherwise defined have the meaning given to them in the Schedule “G” to the Stalking Horse APA.

<b>Milestone</b>	<b>Deadline</b>
Commencement of Sale Process	Not later than five (5) Business Days after the Sale Process Order is granted
Advertise for sale the Purchased Assets in The Globe and Mail (National Edition) and distribute a teaser document to potential interested parties	Not later than five (5) Business Days after the Sale Process Order is granted
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 “ <b>Prospective Purchasers</b> ”), 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.

Bid Deadline	September 27, 2019 at 5 PM (Toronto time)
Qualified Bids	In order for a bid to qualify as a “Qualified Bid” it must, among other things, be in terms at least as favourable to and no more burdensome than, the Stalking Horse APA and provide for a purchase price of at least \$1.2 million plus the Break Fee plus \$50,000 (i.e. \$1.31 million). The Proposal Trustee retains sole discretion to determine whether bids received are Qualified Bids.
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 (3 <sup>rd</sup> ) Business Day after the Bid Deadline to all bidders who submitted Qualified Bids and to the Purchaser to attend an auction (the “ <b>Auction</b> ”). The Auction shall be held at 10:00 a.m. on the fifth (5 <sup>th</sup> ) 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.
Closing Date	Second Business Day following the date on which the Approval and Vesting Order is granted or such later date or earlier date as agreed to by the parties.
Court-specified Time Periods	Where any of the time periods specified in the Sale Process, as set out in the Schedule to the Stalking Horse APA are subject to be established by Court Order, and in the event that the Court establishes a date different than the date set out in the Stalking Horse APA, then the corresponding date established by such provisions of the agreement shall be deemed to be amended to accord with the Court established date, provided no such amendment shall be deemed to have occurred without the express written consent of the Purchaser if the effect of the such amendment is to delay the Closing Date by any period greater than 15 days or later than October 25, 2019.

- a. 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.
- b. 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.
- c. 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.
- d. Court Approval of Agreement if no Qualified Bid: If no Qualified Bid is received by the Bid Deadline (other than the Stalking Horse APA), the Auction will not be held. Accordingly, the Stalking Horse APA will be the Winning Bid and the Vendors shall seek, as expeditiously as possible, approval of the Court to consummate the Transaction contemplated by that agreement, but in no event longer than ten (10) Business Days following the expiry of the Bid Deadline.
- e. 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.

- f. 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.

36. The Proposal Trustee believes that the Sale Process, as described above, is reasonable in the circumstances as it:

- a. establishes a floor value for the Purchased Assets while providing an opportunity for superior realizations to the Purchase Price contemplated in the Stalking Horse APA;
- b. provided the proposed Sale Process Order is granted on August 14, 2019, such that the Sale Process commences by no later than August 21, 2019, the Sale Process timeline appears to provide prospective purchasers with sufficient time to complete due diligence and submit competitive bids;
- c. the Purchased Assets are largely comprised of intellectual property, which is difficult to value. Putting the Purchased Assets through a competitive sale process will result in the marketplace determining the value of the Companies' intellectual property. Also, the financial records of the Companies are both incomplete and unreliable, which further creates difficulty in providing any estimates as to the approximate value of the Purchased Assets;
- d. it is a commonly used method to sell distressed assets in Canadian insolvency proceedings;

- e. the Stalking Horse APA, and the sale of the business as a going concern, is expected to provide greater value than a forced liquidation and/or bankruptcy and, thus, a better and higher return than a forced liquidation bankruptcy sale process;
- f. the availability of the Credit Facility provides stability to the Companies' cash flow and the sustainability of the businesses during the Sale Process;
- g. it will accelerate the realization of the Purchased Assets and, in the Proposal Trustee's view, is commercially reasonable in the circumstances; and
- h. the Break Fee is reasonable in the circumstances in that it is within the range of break fees in similar sized transactions for proceedings under the BIA and that it offers a reasonable balance between its potential adverse effect as a sale deterrent and having the offer under the Stalking Horse APA as a sale stimulator.

37. The Proposal Trustee recommends that the Sale Process, as described above, be approved by this Court on the basis that it is an effective strategy to maximize the value of the Purchased Assets. In the view of the Proposal Trustee, the Stalking Horse APA will provide a benchmark for the realization of the Purchased 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 to purchase the Companies' business and assets as part of a going concern transaction.

### **VIII. CONCLUSIONS AND RECOMMENDATIONS**

38. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 14.

All of which is respectfully submitted this 9<sup>th</sup> day of August, 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 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**

***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 PARISCRIBE  
INC.**

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