

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **iMARKETING SOLUTIONS GROUP  
INC.** and those Companies referred to on Schedule "A"

Applicants

**MOTION RECORD  
(Returnable July 11, 2013)**

July 5, 2013

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**Schedule "A"**

**List of Applicants**

iMarketing Solutions Group Inc.

The Responsive Marketing Group Inc.

GWE Consulting Group (USA) Inc.

Direct Contact Strategies Inc.

Front Line Support Inc.

iMark Events Inc.

RMG General Partner Inc.

Cabot Call Centre Inc.

Engage Interactive Inc.

RMG Smiths Falls LP.

RMG Thunder Bay LP

Xentel Inc. (Delaware)

Wellesley Corporation Inc. (Delaware)

US Billing Inc. (Delaware)

American Graphics & Design Inc. (Wisconsin)

Courtesy Health Watch Inc. (Delaware)

Target Outreach Inc. (Nevada)

Engage Funding Inc. (Delaware)

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# TAB 1

**ONTARIO  
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IN THE MATTER OF THE COMPANIES' CREDITORS  
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Applicants

**NOTICE OF MOTION  
(Adding MLHL Entities and Approval of Engage Priority Agreement)**

iMarketing Solutions Group Inc. ("**IMSG**") and the Companies referred to in Schedule "A" (together, the "**Applicants**") will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Thursday, July 11, 2013 at 10:00 o'clock in the morning, or as soon after that time as the motion can be heard, at 330 University Avenue, in the City of Toronto.

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

**THE MOTION IS FOR:**

1. an Order abridging the time of service of the Notice of Motion and the Motion Record herein and dispensing with further service thereof;
2. an Order adding MLHL Marketing Inc. ("**MLHL Inc.**") to the group of Applicants in the within proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as

amended (the “**CCAA**”) and declaring that MLHL Marketing LP (“**MLHL LP**”) shall also enjoy the benefits of and the protections provided to the Applicants in the Order of the Honourable Mr. Justice Newbould dated April 12, 2013 (the “**Initial Order**”);

3. an Order declaring that MLHL Inc. and MLHL LP shall be subject to any and all charges provided for in the Initial Order, including but not limited to the DIP Lender’s Charge (as defined in the Initial Order) in favour of Shotgun Fund Limited Partnership III (the “**DIP Lender**”);

4. an Order approving the agreement between IMSG and Canadian Imperial Bank of Commerce (“**CIBC**”) and granting a charge in favour of CIBC in respect of the accounts receivable of Engage Interactive Inc. (“**Engage**”) (the “**Engage Priority Agreement**”);

5. an Order declaring, *nunc pro tunc* to the date of the CRO Agreement (as defined herein), that Illumina Partners Inc. (“**Illumina**”), in its capacity as the Applicants’ Court-appointed chief restructuring officer (the “**CRO**”), shall be authorized, at its own expense and only after receiving the consent of IMSG and the Monitor (as defined herein), to engage one or more agents to perform certain of the services provided for in the Court-approved amended CRO engagement agreement dated May 2, 2013 (the “**CRO Agreement**”) between Illumina and IMSG, including those services relating to the SIP Process (as defined herein);

6. an Order declaring that, *nunc pro tunc* to the date of the CRO Agreement and with the consent of the Applicants and the Monitor, the indemnity in favour of the CRO provided for in the Initial Order shall be extended to include any agents engaged by the CRO; and



7. such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. on April 12, 2013, the Applicants sought and were granted protection under the CCAA, pursuant to the Initial Order;

2. pursuant to the Initial Order, Duff & Phelps Canada Restructuring Inc. was appointed as monitor (the “**Monitor**”);

3. the Applicants sought and were granted recognition of the within CCAA proceedings by the U.S. Bankruptcy Court for the District of Delaware pursuant to the Orders of the Honourable Mr. Justice Gross dated April 12, 2013 and May 17, 2013;

4. the Applicants form a North American integrated marketing services business that provides direct marketing solutions for not-for-profit organizations, political organizations and professional associations;

**The MLHL Entities**

5. MLHL Inc. is incorporated pursuant to the *Business Corporations Act* (New Brunswick) with its registered head office in Miramichi, New Brunswick;

6. MLHL LP is a registered partnership pursuant to the *Limited Partnerships Act* (Ontario) with its registered mailing address in Toronto, Ontario;

7. MLHL Inc. and MLHL LP share their working head office located in Toronto, Ontario with the Applicants;

8. MLHL Inc. and MLHL LP have been responsible for, among other things, the operation of the Applicants' call centre located in Miramichi, New Brunswick;

9. adding MLHL Inc. and MLHL LP to the ongoing CCAA proceedings will benefit the Applicants' various stakeholders as they form part of the Applicants' integrated business operations and are likely to add value to any possible sale of the Applicants' business operations in accordance with the sale and investment process (the "**SIP Process**") approved by the Court pursuant to the Order of the Honourable Mr. Justice Newbould dated May 7, 2013 (the "**SIP Approval Order**");

#### **Extension of Initial Order Charges to MLHL Entities**

10. pursuant to the Initial Order, the Applicants were authorized to borrow under the DIP Loan as contemplated by the DIP Term Sheet (as such terms are defined in the Initial Order);

11. IMSG is the borrower under the DIP Term Sheet and the remaining Applicants are guarantors of IMSG's indebtedness to the DIP Lender;

12. pursuant to the Initial Order and as defined therein, the Applicants' assets are subject to the DIP Lender's Charge;

13. should MLHL Inc. and MLHL LP be added to the group of Applicants in the ongoing CCAA proceedings, their assets should also be subject to the charges provided for in the Initial Order, including but not limited to the DIP Lender's Charge;

### **Engage Priority Agreement**

14. pursuant to the Initial Order, the priorities established in respect of all Applicants, except The Responsive Marketing Group Inc. (“**RMG**”), are as follows:

- (a) First – Administration Charge (maximum amount of \$300,000);
- (b) Second – DIP Lender’s Charge (maximum amount of \$1.4 million);
- (c) Third – Inter-Company Charge; and
- (d) Fourth – Directors’ Charge (maximum amount of \$1.3 million);

15. prior to the commencement of the CCAA proceedings, CIBC made a credit facility available to RMG (the “**CIBC Credit Facility**”) in the maximum amount of \$2.0 million which is secured against all of RMG’s assets. The CIBC Credit Facility is also guaranteed by certain subsidiaries of RMG, including Engage;

16. as part of a reorganization of the Applicants’ business in March 2012, the telemarketing and fundraising business for not-for-profit organizations conducted by RMG up to that date was transferred to Engage on a going forward basis;

17. in its monthly reporting to CIBC, RMG would detail the amount of eligible accounts receivable which determined the amount available to RMG under the CIBC Credit Facility. The reorganization of the Applicants’ business was disclosed to CIBC, however, the reporting provided by RMG concerning marginable receivables and their ownership remains a matter of dispute between CIBC and RMG;

18. after the Initial Order was granted, it was determined that CIBC had been extending credit to RMG based on an accounts receivable calculation that included the Engage accounts receivable despite the fact that, through inadvertence, no security interest was granted to CIBC in the Engage accounts receivable;

19. to avoid any disruption to the ongoing CCAA proceedings and to provide CIBC with a level of protection regarding the possible erosion of its secured position, CIBC and the Applicants agreed to the terms of the Engage Priority Agreement, pursuant to which, among other things, CIBC will obtain a charge over Engage's accounts receivable ranking behind the Administration Charge (as defined in the Initial Order), the DIP Lender's Charge and any priority payables, and a potential limited higher priority charge in the event of negative changes in CIBC's security position against RMG beyond agreed upon thresholds;

20. the terms of the Engage Priority Agreement provide for the equitable treatment of CIBC's security position, recognizing the risk of erosion relating to such security position, while also greatly assisting the Applicants by avoiding the costly and time consuming litigation that could result if CIBC attempted to enforce its security against RMG and the receivables now recorded as belonging to Engage and to commence separate insolvency proceedings;

21. the DIP Lender has agreed to the terms of the Engage Priority Agreement and supports the relief sought by the Applicants;

### **CRO's Engaging of Agents and Extension of CRO Indemnity**

22. pursuant to the SIP Process, the CRO distributed an interest solicitation letter to interested parties and prepared a confidential information memorandum with the Monitor's

assistance providing an overview of the Applicants' business, property and financial results which was provided to those interested parties that executed a confidentiality agreement;

23. those interested parties that executed a confidentiality agreement were granted access to a virtual data room populated with additional information relating to the Applicants' business;

24. in order to perform the services set out in the CRO Agreement, including those relating to the SIP Process, the CRO engaged third parties, from time to time, with the consent of the Applicants and the Monitor;

25. the CRO engaging third parties to assist the CRO in providing the services set out in the CRO Agreement has benefitted the Applicants in their restructuring efforts as the services have been provided on a more timely and cost effective basis;

26. further in that regard, the benefit of the indemnity in favour of the CRO provided for in the Initial Order should be extended to any third parties engaged by the CRO to assist the CRO in performing the services set out in the CRO Agreement;

27. the Monitor supports the relief being sought by the Applicants;

28. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

29. Rules 1.04, 2.03, 3.02, 16.08 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

30. such further and other grounds as counsel may advise and this Court may permit.

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

1. the Affidavit of Andrew Langhorne sworn July 5, 2013, and the exhibits attached thereto;
2. the Second Report of the Monitor dated July 5, 2013; and
3. such further and other material as counsel may advise and this Honourable Court may permit.

July 5, 2013

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**AND TO: THE ATTACHED SERVICE LIST**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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Court File No.: CV-13-100067-00CL

*ONTARIO*  
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(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**NOTICE OF MOTION**

**(Adding MLHL Entities and Approval of Engage Priority Agreement)**

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Lawyers for the Applicants

## **TAB 2**

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**AFFIDAVIT OF ANDREW LANGHORNE  
(Sworn July 5, 2013)**

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**AFFIDAVIT OF ANDREW LANGHORNE  
(Sworn July 5, 2013)**

**I, ANDREW LANGHORNE**, of the City of Toronto, in the Province of Ontario, **MAKE  
OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer of iMarketing Solutions Group Inc. ("**IMSG**"), the direct or indirect parent company of the seventeen (17) subsidiary companies referred to in Schedule "A" attached hereto (together with IMSG, the "**IMSG Group**" or the "**Applicants**"), and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.

**RELIEF SOUGHT**

2. This Affidavit is sworn in support of a motion by the Applicants for an order, among other things:

- (a) adding MLHL Marketing Inc. (“**MLHL Inc.**”) as an Applicant in the proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and declaring that MLHL Marketing LP (“**MLHL LP**”) shall also enjoy the benefits of and the protections provided to the Applicants in the Order of the Honourable Mr. Justice Newbould dated April 12, 2013 (the “**Initial Order**”);
- (b) declaring that MLHL Inc. and MLHL LP shall be subject to any and all charges provided for in the Initial Order, including but not limited to the DIP Lender’s Charge (as defined in the Initial Order) in favour of Shotgun Fund Limited Partnership III (the “**DIP Lender**”);
- (c) approving the agreement between IMSG and Canadian Imperial Bank of Commerce (“**CIBC**”) and granting a charge in favour of CIBC over the accounts receivable of Engage Interactive Inc. (“**Engage**”) (the “**Engage Priority Agreement**”);
- (d) declaring that, *nunc pro tunc* to the date of the CRO Agreement (as defined herein), Illumina Partners Inc. (“**Illumina**”), in its capacity as the Applicants’ Court-appointed chief restructuring officer (the “**CRO**”), shall be authorized, at its own expense and only after receiving the consent of IMSG and the Monitor, to engage one or more agents to perform certain of the services provided for in the Court-approved amended CRO engagement agreement dated May 2, 2013 (the “**CRO Agreement**”) between Illumina and IMSG, including those services provided for in the SIP Process (as defined herein);

- (e) declaring that, *nunc pro tunc* to the date of the CRO Agreement and with the consent of the Applicants and the Monitor, the indemnity in favour of the CRO provided for in the Initial Order shall also extend to any agents engaged by the CRO; and
- (f) such further and other relief as counsel may request and this Honourable Court may deem just.

3. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in my Affidavit in these CCAA proceedings sworn April 11, 2013 (the “**First Langhorne Affidavit**”) which is attached hereto as Exhibit “**A**” (excluding exhibits).

#### **BACKGROUND**

4. On April 12, 2013, the Applicants sought and were granted protection under the CCAA. A copy of the Initial Order is attached hereto as Exhibit “**B**”.

5. Pursuant to the Initial Order, Duff & Phelps Canada Restructuring Inc. was appointed as Monitor.

6. Pursuant to the Initial Order, Illumina was appointed as the Applicants’ CRO.

7. The Applicants sought and were granted recognition of these CCAA proceedings by the U.S. Bankruptcy Court for the District of Delaware pursuant to the Orders of the Honourable Mr. Justice Gross dated April 12, 2013 (the “**Interim U.S. Recognition Order**”) and May 17, 2013 (the “**Final U.S. Recognition Order**”). Copies of the Interim U.S. Recognition Order and Final U.S. Recognition Order are attached hereto as Exhibits “**C**” and “**D**”.

8. The Applicants form a North American integrated marketing services business that provides direct marketing solutions for not-for-profit organizations, political organizations and professional associations.

9. The Applicants are one of North America's largest participants in the telemarketing and fundraising industry, employing approximately 1,143 employees as at the date of the Initial Order, including 662 active employees and 481 on layoff. The Applicants' business is more fully described in the First Langhorne Affidavit attached hereto as Exhibit "A".

#### **MLHL INC. AND MLHL LP**

10. MLHL Inc. is incorporated pursuant to the *Business Corporations Act* (New Brunswick) with its registered head office in Miramichi, New Brunswick.

11. MLHL LP is a registered partnership pursuant to the *Limited Partnerships Act* (Ontario) with its registered mailing address in Toronto, Ontario.

12. MLHL Inc. and MLHL LP share their working head office located in Toronto, Ontario with the IMSG Group.

13. MLHL Inc. operates a call centre located in Miramichi, New Brunswick. MLHL Inc. executed a lease in February 2004 in respect of certain premises from which it operates the call centre (the "**Miramichi Lease**"). The Miramichi Lease was for an initial term of five (5) years expiring March 31, 2009 but was subsequently amended and the term extended to March 31, 2014. The Miramichi Lease was also amended to reflect MLHL LP, not MLHL Inc., as the tenant.

14. The call centre located in Miramichi, New Brunswick forms part of the Applicants' integrated North American business operations. In Canada, the Applicants presence in New Brunswick represents the entirety of its operations in the Atlantic provinces which allows the Applicants to maintain a presence in regions across the country.

15. There are no financing statements registered against either MLHL Inc. or MLHL LP in Ontario or New Brunswick. Summaries of searches conducted under the *Personal Property Security Act* against each of MLHL Inc. and MLHL LP in the Province of Ontario, and equivalent searches conducted in the Province of New Brunswick, are attached hereto as Exhibit "E".

16. Pursuant to the Order of the Honourable Mr. Justice Newbould dated May 7, 2013 (the "**SIP Approval Order**"), a sale and investment process (the "**SIP Process**") was approved pursuant to which the Applicants, with the Monitor's assistance, would solicit the market for investors in or purchasers of the Applicants' business. A copy of the SIP Approval Order is attached hereto as Exhibit "F".

17. At the time that the Initial Order was made, the Applicants were reviewing the IMSG Group's corporate structure and the activities carried out by MLHL Inc and MLHL LP. The Applicants believe that adding MLHL Inc. and MLHL LP to the CCAA proceedings will benefit the IMSG Group's various stakeholders as the inclusion of their assets in the SIP Process will add value to the Applicants' business operations, will make the prospect of purchasing the Applicants' business more attractive to potential purchasers and should maximize value for the IMSG Group's stakeholders. MLHL Inc. and MLHL LP will also benefit from the protections afforded by the stay of proceedings.

## **EXTENSION OF INITIAL ORDER CHARGES**

18. Pursuant to the Initial Order, the Applicants were authorized to borrow under the DIP Loan as contemplated by the DIP Term Sheet (as such terms are defined in the Initial Order).

19. The DIP Term Sheet provides that IMSG is the borrower under the DIP Loan and that the remaining Applicants are guarantors of IMSG's indebtedness to the DIP Lender.

20. Pursuant to the Initial Order, the DIP Lender's Charge was granted securing the Applicants' obligations under the DIP Loan by way of a charge over all of the Applicants' assets.

21. Further to the Applicants' request that this Honourable Court add MLHL Inc. and MLHL LP to the ongoing CCAA proceedings, the Applicants, after consultation with the DIP Lender and the Monitor, request that this Honourable Court declare that the assets of MLHL Inc. and MLHL LP are subject to the charges provided for in the Initial Order, including but not limited to the DIP Lender's Charge.

## **ENGAGE PRIORITY AGREEMENT**

22. Pursuant to the Initial Order, the priorities established in respect of all Applicants, except The Responsive Marketing Group Inc. ("**RMG**"), are as follows:

- (a) First – Administration Charge in the maximum amount of \$300,000;
- (b) Second – DIP Lender's Charge in the maximum amount of \$1.4 million;
- (c) Third – Inter-Company Charge; and
- (d) Fourth – Directors' Charge in the maximum amount of \$1.3 million.

23. Prior to the commencement of the CCAA proceedings, CIBC made a credit facility available to RMG (the “**CIBC Credit Facility**”) in the maximum amount of \$2.0 million which is secured by all of RMG’s assets. CIBC registered a financing statement pursuant to the *Personal Property Security Act* (Ontario) on October 6, 1993 against all of RMG’s assets with the exception of “consumer goods”. The CIBC Credit Facility is also guaranteed by certain subsidiaries of RMG, including Engage.

24. In March 2012, as part of a reorganization of the Applicants’ business, the telemarketing and fundraising business for not-for-profit organizations conducted by RMG up to that date was transferred to Engage on a going forward basis.

25. In its monthly reporting to CIBC, RMG would detail the amount of eligible accounts receivable which was used to determine the amount available to RMG under the CIBC Credit Facility. The reorganization of the Applicants’ business was disclosed to CIBC, however, the reporting provided by RMG concerning marginable receivables and their ownership remains a matter of dispute between CIBC and RMG.

26. Although Engage’s accounts receivable were included in RMG’s monthly reporting and availability under the CIBC Credit Facility was based on RMG’s monthly reports, through inadvertence, no security interest was granted to CIBC in respect of Engage’s accounts receivable.

27. Soon after the Initial Order was granted, it was determined that Engage’s accounts receivable had been included in RMG’s monthly reporting and that CIBC had been extending credit to RMG on what it believed to be a fully secured basis when, in fact, it did not have security over Engage’s accounts receivable.

28. Since the commencement of the CCAA proceedings, CIBC and the Applicants have engaged in discussions in an attempt to provide CIBC with a level of protection regarding the possible erosion of its security position while at the same time avoiding any disruption to the ongoing CCAA proceedings and permitting the Applicants to focus on their efforts to maximize and realize value for their stakeholders, including CIBC.

29. The parties have agreed to the terms set out in the Engage Priority Agreement which provide that the Applicants will use reasonable best efforts to obtain an order granting CIBC a charge over the Engage accounts receivable that will rank behind only the Administration Charge, the DIP Lender's Charge and any priority payables, and a potential limited higher priority charge in the event of negative changes in CIBC's security position against RMG beyond agreed upon thresholds. A copy of the Engage Priority Agreement is attached hereto as Exhibit "G".

30. It is the Applicants' belief that the terms of the Engage Priority Agreement provide for the equitable treatment of CIBC's security position while greatly assisting the Applicants in focusing upon their restructuring efforts and maximizing value for all of their stakeholders. If the Engage Priority Agreement is not approved by this Honourable Court, it is likely that CIBC would attempt to enforce its security against RMG and the receivables now recorded as belonging to Engage and to commence separate insolvency proceedings that would prove costly and time consuming and would severely compromise the Applicants' restructuring efforts in the ongoing CCAA proceedings to the detriment of the Applicants' other stakeholders.

#### **AGENTS ENGAGED BY THE CRO AND THE CRO INDEMNITY**

31. In accordance with the SIP Process, the CRO, with the assistance of the Monitor, has conducted the SIP Process and, in that regard, has distributed an interest solicitation letter to



interested parties and prepared a confidential information memorandum with the Monitor's assistance providing an overview of the Applicants' business, property and financial results which was provided to those interested parties that executed a confidentiality agreement. Those interested parties that executed a confidentiality agreement were granted access to a virtual data room populated with additional information relating to the Applicants' business.

32. The CRO has engaged a third party, at its own expense and with the consent of the Applicants and the Monitor, to assist with compiling information for the virtual data room and to assist the CRO in performing additional services provided for under the SIP Process.

33. It has been beneficial for the CRO to retain agents to assist with the SIP as this has allowed the CRO to focus on operational and other issues faced by the Applicants during the course of their restructuring efforts. The retention of agents by the CRO has not resulted in additional costs in the CCAA proceedings as the fees of any agents are paid by the CRO.

34. The Applicants believe that the CRO engaging third parties to assist the CRO in performing the services set out in the CRO Agreement, including the services relating to the SIP Process, has been beneficial to the Applicants, the ongoing CCAA proceedings and, ultimately, the Applicants' stakeholders, as the services provided have been provided on a more timely and cost effective basis.

35. Pursuant to the Initial Order, the CRO shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Initial Order, save and except for any gross negligence or wilful misconduct on the CRO's part. Further, the Initial Order provides that the Applicants shall indemnify their directors and officers, including the CRO, against obligations and liabilities that they may incur as directors and officers of the Applicants except to the extent that


such obligations or liabilities are incurred as a result of the director or officer's gross negligence or wilful misconduct.

36. In light of the benefits that the Applicants have derived from the CRO engaging third parties to assist the CRO in fulfilling its obligations under the CRO Agreement, the Applicants believe that the same indemnity in favour of the CRO that is set out in the Initial Order should be extended to any agents engaged by the CRO with the consent of the Applicants and the Monitor.

37. The Monitor has indicated that it supports the relief sought by the Applicants.

38. I swear this Affidavit in support of IMSG's request that an Order be granted under the CCAA substantially in the form included at Tab 3 of the Motion Record, and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 5<sup>th</sup> day of  
July, 2013.

  
Commissioner for Taking Affidavits  
DANNY NUNES

  
ANDREW LANGHORNE

**Schedule "A"**

**List of Applicants**

iMarketing Solutions Group Inc.

The Responsive Marketing Group Inc.

GWE Consulting Group (USA) Inc.

Direct Contact Strategies Inc.

Front Line Support Inc.

iMark Events Inc.

RMG General Partner Inc.

Cabot Call Centre Inc.

Engage Interactive Inc.

RMG Smiths Falls LP.

RMG Thunder Bay LP

Xentel Inc. (Delaware)

Wellesley Corporation Inc. (Delaware)

US Billing Inc. (Delaware)

American Graphics & Design Inc. (Wisconsin)

Courtesy Health Watch Inc. (Delaware)

Target Outreach Inc. (Nevada)

Engage Funding Inc. (Delaware)

# **EXHIBIT “A”**

Court File No.:

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **iMARKETING SOLUTIONS GROUP INC.**  
and those Companies referred to on Schedule "A"

Applicants

**AFFIDAVIT OF ANDREW LANGHORNE**  
**(Sworn April 11, 2013)**

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Lawyers for the Applicants

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ARRANGEMENT OF **iMARKETING SOLUTIONS GROUP INC.**  
and those Companies referred to on Schedule "A"

Applicants

**AFFIDAVIT OF ANDREW LANGHORNE  
(Sworn April 11, 2013)**

**I, Andrew Langhorne**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND  
SAY AS FOLLOWS:**

1. I am the Chief Executive Officer (the "CEO") of iMarketing Solutions Group Inc. ("IMSG") and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.

2. All references to currency in this Affidavit are to Canadian Dollars, unless otherwise indicated.

**I. RELIEF SOUGHT**

3. This Affidavit is sworn in support of an application (the "Application") for an initial order (the "Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA"), in respect of the Applicants (as defined below), among other things:

- (a) abridging the time for service of the Notice of Application and dispensing with service on any other person other than those served;
  - (b) declaring that the Applicants are parties to which the CCAA applies;
  - (c) appointing Duff & Phelps Canada Restructuring Inc. (“**Duff & Phelps**”) as Monitor of the Applicants in these proceedings (the “**Proposed Monitor**”);
  - (d) staying all proceedings and remedies taken or that might be taken in respect of the Applicants or any of their property, except as otherwise set forth in the Initial Order or as otherwise permitted by law;
  - (e) authorizing the Applicants to carry on business in a manner consistent with the preservation of their property and the operational restructuring proposed and to make certain payments in connection with their business and the proceedings taken herein;
  - (f) authorizing the Applicants to enter into the DIP Term Sheet and approving the DIP Charge (both terms as defined below);
  - (g) approving the Administrative Charge (as defined below);
  - (h) approving the D&O Charge (as defined below);
  - (i) approving the appointment of Illumina Partners Inc. (“**Illumina**”) as the Chief Restructuring Officer (the “**CRO**”); and
  - (j) permitting the Applicants to file with the Court a plan of compromise or arrangement.
4. The IMMSG Group (as defined below) is facing an intense liquidity challenge such that it cannot pay all liabilities as they become due, which liabilities include ongoing operating costs, as well as legacy costs incurred as a result of previous operational restructuring initiatives already undertaken. These initiatives were implemented with a view to returning the business of the IMMSG Group to profitability, scheduled to occur this year, as discussed in more detail below.
5. The purpose of this Application is to:



- (a) stabilize the Applicants' businesses by staying any creditor actions;
- (b) solve the Applicants' liquidity challenge by virtue of the DIP Financing (as defined below);
- (c) finalize the operational restructuring initiatives that have been and are proposed to be implemented by the Applicants; and
- (d) provide time for the Applicants to seek strategic partners, investors or plan sponsors to ensure that the Applicants' businesses continue as going concerns for the benefit of customers, suppliers, employees and other stakeholders.

## II. OVERVIEW, BUSINESS OPERATIONS AND CORPORATE STRUCTURE

6. IMMSG is the direct or indirect parent company of the twenty-two (22) subsidiaries identified in the simplified corporate chart annexed hereto and marked as Exhibit "A". IMMSG and its subsidiaries are a family of North American integrated marketing services companies that provide direct marketing solutions for not-for-profit organizations, political organizations and professional associations. With the exception of SPUCC, MLHL, RMG Quebec, Professionally Speaking and Advanced Communications (all as defined below), the remaining subsidiaries along with IMMSG comprise the Applicants in these proceedings (collectively, the "IMMSG Group" or the "Applicants"). Attached hereto and marked as Exhibit "B" is a list of entities forming the IMMSG Group.

7. The Applicants are one of the largest participants in the telemarketing and fundraising industry, employing approximately 1,143 employees (662 active employees and 481 on layoff), across North America. Operating under its previous name, Xentel DM Incorporated ("Xentel"), Xentel acquired The Responsive Marketing Group Inc. ("RMG") in March 2010, IMMSG and its predecessor corporations have operated in the telemarketing and fundraising sector for over 25 years. The Applicants have established themselves as North America's pre-eminent integrated marketing services company bringing market products, services and expertise to bear in a broad range of markets and on behalf of a broad, varied and notable roster of clients.

8. IMMSG was incorporated pursuant to the provisions of the *Business Corporations Act* (Alberta), R.S.A. 2009, C. B-9, as amended, and its registered head office is in Calgary, Alberta

9. Prior to December 3, 2012, IMMSG was a publicly traded company listed on the TSX Venture Exchange (the “TSX-V”) under the symbol “XDM”. After the aforementioned date, IMMSG voluntarily delisted its common shares from the TSX-V and began listing its common shares on the Canadian National Stock Exchange under the symbol “IMR”.

10. As at April 8, 2013, the issued and outstanding capital of IMMSG consisted of 32,395,409 Class A common shares. There are no other classes of shares outstanding at this time. As at April 8, 2013, IMMSG’s largest shareholders include the following:

- (a) Shotgun Fund Management Inc., Shotgun Fund Management II Inc. and Shotgun Fund Management III Inc. (“**SF III**”) (together, the “**Shotgun Funds**”), managed by Argosy Partners Ltd. (“**Argosy**”), that own approximately 28% of the outstanding common shares in aggregate;
- (b) two of IMMSG’s current directors who directly or indirectly own approximately 13% of the outstanding common shares in IMMSG; and
- (c) two of IMMSG’s former directors who directly or indirectly own approximately 32% of the outstanding common shares in IMMSG.

11. Each of the other Applicants is a direct or indirect wholly-owned subsidiary of IMMSG.

12. As depicted in the corporate chart annexed as Exhibit “A”, IMMSG owns all of the issued and outstanding shares of RMG, Direct Contact Strategies Inc. (“**Direct Contact**”), Front Line Support Inc. (“**Front Line**”) and iMark Events Inc. (“**iMark**”). RMG, in turn, owns all of the issued and outstanding shares of Cabot Call Centre Inc. (“**Cabot Call**”), Special Projects Unit Call Centre Inc. (“**SPUCC**”) and Engage Interactive Inc. (“**Engage**”). RMG also owns all of the issued and outstanding shares of RMG General Partner Inc. (“**RMG GP**”), which owns 0.01% of the issued and outstanding shares or

partnership units in MLHL Marketing Inc. (“**MLHL**”), RMG Smiths Falls, LP (“**RMG Smiths Falls**”), RMG Thunder Bay, LP (“**RMG Thunder Bay**”) and RMG Quebec, LP (“**RMG Quebec**”). The remaining 99.9% of issued and outstanding shares or partnership units in the aforementioned companies are owned by RMG. As at the date of this Affidavit, SPUCC, MLHL and RMG Quebec are inactive corporations.

13. IMMSG also owns all of the issued and outstanding shares in GWE Consulting Group (USA) Inc. (“**GWE**”). GWE is incorporated under the laws of the State of Washington and holds IMMSG’s investments in IMMSG’s operations in the United States (“**U.S.**”).

14. GWE owns all of the issued and outstanding shares in Xentel Inc. (“**Xentel**”) and Wellesley Corporation Inc. (“**Wellesley**”). Xentel owns all of the issued and outstanding shares in US Billing Inc. (“**US Billing**”), American Graphics & Design Inc. (“**American Graphics**”), Advanced Communications Inc. (“**Advanced Communications**”) and Professionally Speaking Inc. (“**Professionally Speaking**”). As at the date of this Affidavit, Advanced Communications and Professionally Speaking are inactive corporations. Wellesley owns all of the issued and outstanding shares in Courtesy Health Watch Inc. (“**Courtesy Health**”), Target Outreach Inc. (“**Target**”) and Engage Funding Inc. (“**Engage**”).

**A. Management of the Applicants**

15. The Board of Directors of IMMSG is currently comprised of four directors. None of the directors are non-independent, as defined by the *Ontario Securities Act*, National Policy 58-201.

16. It is expected that the existing senior management team, comprised of Michael Davis, IMMSG’s Founder and Managing Director, Political, and myself, will remain in place on the Board as well during this restructuring. Notwithstanding this expectation, as part of the Application, the Applicants are seeking the Court’s approval of the appointment of Illumina as the CRO of the IMMSG Group.

**B. Integration of the Applicants and Centre of Main Interest**

17. The Applicants are of the view that the restructuring of the operations of the IMSG Group as a whole to be undertaken under the CCAA may involve a restructuring, sale and/or recapitalization of certain businesses. All options will be explored to maximize value for stakeholders and to continue to service customers. It is anticipated that this process will require a judicial proceeding and approval in Canada as well as the U.S., in view of the assets and operations located there. The cross-border scope of the business, assets and operations of the Applicants accentuate the need for a co-ordinated proceeding, as is available under the CCAA and Chapter 15 of the U.S. *Bankruptcy Code*.

18. The IMSG Group's business is fully integrated, including between the Canadian and the U.S. operations. The restructuring of the IMSG Group can be administered most efficiently through a single, centralized restructuring process. Such a process will minimize the cost of the restructuring, including the time necessary to effect the restructuring, sale or refinancing effort and thereby maximize the overall value of the assets and operations for the benefit of all of the Applicants' creditors, customers and stakeholders.

19. The Applicants centre of main interest ("COMI") is Ontario. Although IMSG's registered head office is located in Calgary, Alberta, the majority of all business operations are run out of IMSG's head office in Toronto. The primary corporate, management, banking, accounting and strategic functions for all Applicants are undertaken from IMSG's head office in Ontario, although client-facing interactions often occur in the location of each subsidiary.

20. It is contemplated that the CCAA proceeding in Canada will be the primary court supervised process for the restructuring of the IMSG Group. While the restructuring will be undertaken in Canada, the Applicants will seek an Order pursuant to Chapter 15 of the U.S. *Bankruptcy Code* to have this proceeding recognized as a foreign main proceeding in order to facilitate the implementation of matters in the U.S. that have been approved in this CCAA proceeding.

21. In support of the Applicants' position that the Applicants' COMI is Ontario, the Applicants rely on the following:

- (a) all corporate strategic decision-making for the IMSG Group occurs at IMSG's Toronto office and the CEO and Chief Financial Officer ("CFO") have their primary business office in Ontario;
- (b) as CEO of IMSG, I am involved, along with other members of the senior management team, in all material decisions regarding the operations of all Applicants, including the approval of all terms and conditions of any material contracts, and all such decisions are directed from, made in or monitored from our offices in Ontario;
- (c) all treasury management functions, including a centralized cash management system for the IMSG Group, are conducted from IMSG's office in Ontario;
- (d) financial reporting of the Applicants is done on a consolidated basis (except where separate entity reporting is required by taxing authorities) and the audited financial statements are prepared in Ontario;
- (e) budgeting for each of the Applicants is approved at IMSG's office in Ontario;
- (f) accounting is performed and the books and records are maintained at IMSG's head office in Ontario;
- (g) human resource policy and administration, including certain human resource functions such as employee recruitment strategy and the administration of employee benefits, are performed and located in Ontario;
- (h) investor communication functions are undertaken at the Ontario office;
- (i) the vast majority of corporate minute books for each Applicant is located and maintained in Ontario;

- (j) the only credit facilities made available to any of the Applicants are with lenders who manage such facilities in Toronto, Ontario, and certain of the credit facilities and security granted in respect thereof are governed by Ontario law (as discussed below); and
- (k) the Board of Directors' meetings are customarily held in Ontario.

22. The business operations of the Applicants, including those limited partnership subsidiaries, are functionally integrated. There are many suppliers, creditors and other stakeholders of the IMSG Group that are common to several of the Applicants.

23. In addition to the credit facility advanced to IMSG by SF LP III (described in greater detail below), the Canadian Imperial Bank of Commerce ("CIBC") made a credit facility available to RMG (the "CIBC Credit Facility"), which credit facility was secured by a security interest over the assets of RMG and which was guaranteed by certain subsidiaries of RMG, namely Cabot Call, SPUCC, Engage, MLHL, RMG Smiths Falls, RMG Thunder Bay and RMG Quebec on an unsecured basis.

24. In addition, as described in more detail below, the cash management arrangements among the Applicants are completely integrated, with the companies borrowing and advancing funds within the IMSG Group as needed, demonstrating that the operations of the IMSG Group, including the limited partnerships, are functionally, financially and operationally integrated. As such, there is a need to deal with the restructuring in a procedurally consolidated manner. As the operations of the IMSG Group are managed centrally at the IMSG level, the Applicants are of the view that Ontario is the most appropriate forum for overseeing the restructuring of the entire IMSG Group.

### **III. THE APPLICANTS' BUSINESSES**

25. The Applicants provide direct marketing solutions for not-for-profit organizations, political organizations and professional associations. The IMSG Group's core businesses include: (i) tele-fundraising and outreach; (ii) data development; (iii) direct mail fundraising and outreach; (iv) data

management; (v) publishing; (vi) social media; (vii) secure caging (an industry term for the process or act of collecting donations, processing donor mail and depositing contributions to customer accounts); and (viii) marketing list rentals (the renting of donor lists to third parties in exchange for a fee).

26. The IMMSG Group's Canadian operations are located in the provinces of Ontario, British Columbia, Alberta, Manitoba, Quebec and New Brunswick. The IMMSG Group's U.S. operations are located in the states of Wisconsin, Colorado, Pennsylvania, Missouri, Virginia, New Mexico and Florida. For the nine (9) months ended September 30, 2012, the IMMSG Group's Canadian operations accounted for approximately 57% of the Applicants' gross margin while U.S. operations accounted for the remaining 43%. In 2013, the Applicants' Canadian operations were expected to account for 53% of the total gross margin.

27. As at April 5, 2013, the Applicants employed approximately 1,143 employees (662 active employees and 481 on layoff) almost evenly divided between Canada and the U.S. The Applicants' employees are not unionized and there are no pension plans in place.

**A. Core Businesses and Services**

28. The IMMSG Group's core businesses and services are structured as three divisions: (i) not-for-profit; (ii) political; and (iii) community fundraising. The core businesses and services provided to these divisions include the following:

*(a) Fee for Service Fundraising and Data Development*

29. Donor and voter prospecting and renewal services are contracted by not-for-profit, charitable and political organizations. The Applicants offer an integrated, all-inclusive service from database creation through to processing the collection of donations. The Applicants charge a fee-for-service based upon the hours of work involved, usually in the context of a three to five year contract.

*(b) Direct Voter Contact*

30. On behalf of their political clients, the Applicants conduct direct tele-service contact with potential voters to assist in the assessment and evaluation of political and consumer attitudes. Revenue generation is based on a fee-for-service where the client is charged based upon the hours of work or presentations made by the Applicants.

*(c) Performance Based Fundraising*

31. Fundraising services are provided to community based not-for-profit and charitable organizations on a performance basis. The Applicants offer an integrated, all-inclusive service from database creation through to processing the collection of donations. The Applicants charge percentage based fees based upon the total dollars raised. This work can include a minimum client guarantee usually in the context of a three to five year contract.

**B. Facilities**

32. The Applicants operate out of twenty-five (25) leased premises located across Canada and the U.S. With the exception of the head office located in Toronto and a smaller corporate office for the U.S. operations located in Milwaukee, Wisconsin, the remaining leased premises are comprised of contact centres from which the Applicants operate their business. Attached hereto as Exhibit "C" is a list of the Applicants' leased premises.

33. In addition to the aforementioned leased premises, the Applicants have closed several contact centres over the past eighteen (18) months resulting in the early exit of several leased premises. In certain instances, the Applicants have either listed the vacated premises for sublease or negotiated settlements with the relevant landlords. Attached hereto as Exhibit "D" is a list of the leased premises vacated by the Applicants within the last eighteen (18) months.



34. IMMSG also recently executed an offer to lease premises at Portage Place in Winnipeg, Manitoba. The date of scheduled occupancy for the Portage Place premises is June 15, 2013. IMMSG also recently entered into an agreement to lease additional premises in Virginia. The Virginia premises were recently renovated and are ready for immediate occupancy, however, the Applicants have not yet occupied the premises.

### C. Licenses

35. In Canada, there are three levels of government registration that are required to permit the Canadian Applicants to operate both as a general business and as a fundraising business. At the federal level, the Canadian Radio-television and Telecommunications Commission (the "CRTC") is the main regulating body for telemarketing business in Canada. The CRTC requires IMMSG to register with the national "Do Not Call List" (the "DNCL") (described in greater detail below), including all of the Canadian Applicants' operating names and outgoing phone numbers.

36. At the provincial level, in both Alberta and Saskatchewan, business licence registrations are required (either provincial or extra-provincial) for all companies conducting business within the province. Further, both provinces require entities conducting telemarketing businesses within the provinces to be registered and licensed under their respective statutes governing charitable fundraising. British Columbia requires all telemarketing organizations to register all call centre locations that call into the province.

37. At the municipal level, one of the cities in which the Applicants have a contact centre, Burnaby, British Columbia, requires business licenses in order to operate.

38. Within the U.S., the majority of states in which the IMMSG Group operates require the registration and purchase of a professional fundraiser ("PFR") license. Some states require the filing of an annual return as part of the PFR licensing requirement. Further to this, several states require registration with the local "do-not call" list and subsequent purchase of a "do-not-call" list subscription.

**D. Employees**

39. The Applicants employ approximately 1,143 employees (662 active employees and 481 on layoff) across Canada and the U.S. The vast majority of employees work in the Applicants' contact centres as telesales representatives. The Applicants' employees are not unionized and there are no pension plans in place. While the distribution of the workforce is relatively even between Canada and the U.S., the costs associated with the Applicants' Canadian employees are higher due to the fact that more senior level employees and management are located in Canada. In addition, the market wage for Canadian employees is higher and the cost of benefits to employees is also higher in Canada.

40. As described below, the Applicants terminated the employment of a number of employees as a result of the elimination of certain legacy systems, the closure of the Applicants' specialty entertainment business in September 2012 (described in greater detail below) and as part of the Applicants' previous efforts to restructure the operations of their businesses in 2011 and 2012. In addition, based on their business requirements, and in an effort to find the most cost effective way to deliver service to their clients, the Applicants constantly adjust their workforce in the relevant contact centres. The Applicants' current business requirements are such that there is a decreased need for acquisition calling in the short term. As a result, in late March 2013 IMSG laid off approximately 400 front line contact centre employees and laid off or terminated related management employees at those contact centres.

**E. Financing Activities in 2012**

41. On October 12, 2012, IMSG secured bridge loan financing in the amount of \$1,500,000 (the "**Bridge Loan**"). The Bridge Loan was provided by Shotgun Fund Limited Partnership III ("**SF LP III**") by its general partner, SF III, and a holding company, NH Holdings Ltd., controlled by, among others, Michael Davis, a director and officer of IMSG. The purpose of the Bridge Loan was to address short-term liquidity issues and to improve IMSG's financial position. The net proceeds from the Bridge Loan were used for general working capital and operational restructuring purposes.

42. The Bridge Loan was evidenced by a promissory note (the “**Promissory Note**”) having a one year term. The Promissory Note was secured by a security agreement dated October 10, 2012 in favour of SF LP III as well as a securities pledge agreement of that same date, pledging as collateral security certain of IMMSG’s shares in RMG and Direct Contact. Attached hereto and marked as Exhibits “**E**”, “**F**” and “**G**” are true copies of the Promissory Note, the security agreement dated October 10, 2012 and the securities pledge agreement dated October 10, 2012, respectively.

43. In addition, two of IMMSG’s U.S. subsidiaries, GWE and Target, guaranteed IMMSG’s indebtedness under the Bridge Loan pursuant to a guarantee dated October 10, 2012. GWE and Target also granted security over all of their assets pursuant to a security agreement dated October 10, 2012. Lastly, IMMSG provided further security by pledging the shares directly held by IMMSG in its U.S. subsidiaries pursuant to a pledge agreement dated October 10, 2012. Attached hereto as Exhibits “**H**”, “**I**” and “**J**” are true copies of the U.S. guaranty, the U.S. security agreement and the U.S. pledge agreement, respectively, all of which are dated October 10, 2012.

44. Pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transaction* (“**MI 61-101**”), the Bridge Loan was considered a “related party transaction”, however, IMMSG was exempt from the formal valuation requirements of MI 61-101 as no securities of IMMSG were listed or quoted for trading on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market or a stock exchange outside of Canada and the U.S. at the time of the Bridge Loan transaction. IMMSG was also exempt from obtaining minority approval in connection with the Bridge Loan due to the fact that (i) neither the fair market value of the Promissory Note nor the consideration received in respect thereof exceeded \$2,500,000; (ii) IMMSG had one or more independent directors in respect of the Bridge Loan who were not employees of IMMSG; and (iii) all of the independent directors approved the Bridge Loan.

45. On December 4, 2012, IMMSG completed a private placement offering (the “**Offering**”) of a secured convertible promissory note (the “**Convertible Note**”). The gross proceeds from the Offering, a portion of which were to pay off IMMSG’s debt under the Bridge Loan and the Promissory Note, were \$3,500,000 and the sole subscriber was SF LP III. Attached hereto as Exhibit “**K**” is a true copy of the Convertible Note.

46. The Convertible Note has a maturity date of December 4, 2015. IMMSG granted SF LP III a security interest in all of its assets pursuant to a security agreement dated December 4, 2012 (the “**SF LP III Security Agreement**”) as well as a securities pledge agreement of that same date, pledging as collateral certain of IMMSG’s shares in RMG and Direct Contact. Attached Exhibits “**L**” and “**M**” are true copies of the SF LP III Security Agreement and the securities pledge agreement dated December 4, 2012.

47. In addition, two of IMMSG’s U.S. subsidiaries, GWE and Target, guaranteed IMMSG’s indebtedness under the Convertible Note pursuant to a guarantee dated December 4, 2012. GWE and Target also granted security over all of their assets pursuant to a security agreement dated December 4, 2012. Lastly, IMMSG provided further security by pledging the shares directly held by IMMSG in any of its U.S. subsidiaries pursuant to a pledge agreement dated December 4, 2012. Attached as Exhibits “**N**”, “**O**” and “**P**” are true copies of the U.S. guaranty, the U.S. security agreement and the U.S. pledge agreement, respectively, all of which are dated December 4, 2012.

48. The net proceeds from the Offering were used to repay the principal amount, together with all accrued interest, owed by IMMSG under the Bridge Loan and the Promissory Note. The balance of the net proceeds were used to fund the Applicants general working capital requirements.

#### **F. Key Factors Affecting the Business**

49. The IMMSG Group’s operations and financial results are influenced by a number of factors, many of which are beyond the Applicants’ control. The most significant factors, in no particular order of importance, are: (i) reliance on key clients; (ii) database attrition; and (iii) government regulation.

50. The Applicants have strong relationships with several hundred clients and no one customer, at this time, accounts for more than 10% of the Applicants' consolidated annual revenues. However, it is critical for the preservation and continuation of the Applicants' client relationships that they be permitted to restructure their businesses.

51. On an annual basis, there is considerable attrition to the Applicants' database due to consumer apathy, changing financial circumstances, a change of spending patterns and relocation which emphasizes the need for constant database renewal. The Applicants are committed to replenishing their transactional database and to maintaining a strategy to do so on an ongoing basis.

52. Certain aspects of the Applicants' business are regulated by state, provincial and federal governments. As a member of the Canadian Marketing Association and the Direct Marketing Association, the Applicants actively promote responsible, consumer-friendly practices, industry codes of conduct and self-regulation.

53. On September 30, 2008, the CRTC launched the DNCL operated by Bell Canada. Consumers are able to register their telephone numbers and the DNCL list is available for a fee to all organizations that use the telephone to contact consumers. Subject to certain exemptions, all such organizations are required to remove those numbers on the DNCL from their telemarketing lists or face fines and possible loss of telephone service.

54. Other issues and risks that affect the Applicants' businesses include the following:

- (a) the Applicants' businesses are labour intensive with approximately 40% of all costs expended on payroll costs of contact centre personnel. The teleservices industry is characterized by high turnover and, accordingly, labour costs are directly affected by unemployment rates and personnel availability which vary regionally and nationally; and

- (b) a significant portion of the Applicants' revenues are derived from marketing campaigns in which orders or donations are fulfilled through the mail. While the Applicants are increasing the use of credit cards and third parties in the fulfillment process, the Applicants continue to rely upon a timely and effective postal service.

**G. Bank Accounts and Cash Management**

55. The Applicants manage a centralized cash management system out of the head office located in Toronto. As a result of separate pre-existing banking relationships with RMG and Xentel that pre-date the RMG-acquisition in 2010, the centralized cash management system operates with multiple financial institutions in Canada and the U.S. The daily financial requirements of the Applicants are funded by cash receipts and drawdowns under the CIBC Credit Facility. Other than CIBC, there is no credit or overdraft provided by any of the aforementioned financial institutions and, as such, funds are transferred to the appropriate bank account to cover cheques, wire transfers, automatic clearing house payments or direct debits from those bank accounts.

56. In addition to the centralized cash management system operated out of Toronto, IMSG operates bank accounts for a number of its clients involved in the community fund-raising business in both Canada and the U.S. pursuant to contractual agreements (the "**Client Account Agreements**"). Attached hereto as Exhibit "Q" is a true copy of a typical Client Account Agreement with the name of the client redacted.

57. Pursuant to the Client Account Agreements, funds raised by the IMSG Group are deposited into accounts that have been set up and administered by the Applicants but which are in the name of the Applicants' clients. Most clients choose to have the funds deposited into these accounts "swept" by the Applicants pursuant to a separate debit authorization form (the "**Debit Authorization Agreements**"). Attached hereto as Exhibit "R" is a true copy of a typical Debit Authorization Agreement with the name of the client redacted.

58. Pursuant to the Client Account Agreements and the Debit Authorization Agreements, the Applicants have complete dominion over and are the administrators of the accounts.

59. The usual operation of the client accounts is as follows:

- (a) money from the Applicants' fund-raising efforts is deposited into the client accounts either directly (by way of credit card pledges) or by way of deposits from mail-in pledges;
- (b) on a periodic basis when invoices are rendered, the Applicants "sweep" funds from the client accounts to the Applicants' own accounts in accordance with the Debit Authorization Agreements. Generally, the Debit Authorization Agreements provide that the Applicants are authorized to transfer 100% of the funds raised and deposited into the client accounts; and
- (c) subsequently, the Applicants provide clients with an accounting and a payment of that portion of the funds raised that is owed to the clients pursuant to their agreements.

60. As a result of the Client Account Agreements and the Debit Authorization Agreements, the Applicants have approximately 120 bank accounts that they manage, most of which are active. These banking arrangements apply only to the Applicants' community fund raising line of business and not the political or not-for-profit lines of business which are generally based on a "fee for service" arrangement whereby the Applicants invoice their clients and the invoices are paid by clients in the normal course.

61. Historically, the Applicants have been relatively current in paying the percentage of funds raised by the Applicants and payable to their clients, however, as the cash flow difficulties of the Applicants have increased in recent months, the timing of these payments has lagged. As of the date of this Affidavit, approximately twenty-seven (27) clients in Canada are owed \$480,000 for periods prior to and including March 2013. All amounts owing to the Applicants' U.S. clients in the community fund raising line of business have been paid until the end of March 2013 and the only amounts that remain outstanding are those currently payable in the month of April 2013.

62. The Applicants, with the consent of the DIP Lender (as defined below), intend to aggressively fund these client payments over the first 4-8 weeks of this restructuring process which will bring them current. These payments have been factored into the Cash Flow Forecast (as defined below).

*Funding of Canadian Operations*

63. Of the thirteen Canadian Applicants, three (RMG GP, RMG Quebec and RMG Smiths Falls) do not maintain their own bank accounts and one (SPUCC) maintains its own bank account but does not issue cheques from or deposit any funds into its account. RMG maintains an account with CIBC and also maintains a U.S. bank account. The cash deposited into the RMG account with CIBC comes from ordinary course deposits from customers.

64. IMSG maintains accounts with Bank of Nova Scotia and JP Morgan Chase (“**JP Morgan**”). To the extent that funds are needed by the Canadian Applicants, funds are provided from accounts held by IMSG or RMG.

65. IMSG is responsible for all payroll obligations owed to the Applicants’ corporate and management staff and RMG Smiths Falls is responsible for all payroll obligations owed to the Applicants’ Canadian employees.

*Funding of U.S. Operations*

66. Of the ten U.S. Applicants, five (GWE, Wellesley, Advanced Communications, Professionally Speaking and Engage) do not maintain their own bank accounts. Target maintains a zero balance account with JP Morgan as deposits made to the account are transferred to the Xentel account and Target’s bills are paid from the Xentel account.



67. Xentel maintains accounts with JP Morgan and Bank of America. In addition to ordinary course deposits from consumers, cash transfers into the Xentel account come from the Applicants' other U.S. bank accounts and Canadian bank accounts. Xentel's bills are paid from its own account.

68. US Billing maintains an account with JP Morgan. In addition to ordinary course deposits from consumers, cash transfers into the US Billing account come from the Xentel account with JP Morgan. US Billing's bills are paid from its own account.

69. Like Target, American Graphics maintains a zero balance account with JP Morgan as deposits made to the account are transferred to the Xentel account and American Graphics' bills are paid from the Xentel account.

70. Courtesy Health maintains an account with JP Morgan. In addition to ordinary course deposits from consumers, cash transfers into the Courtesy Health account come from the Xentel account with JP Morgan. Courtesy Health's bills are paid from its own account.

71. Each one of Target, Xentel, U.S. Billing, American Graphics and Courtesy Health maintains a separate payroll account.

72. Cash requirements of the U.S. operations are funded through the bank account maintained by Xentel with JP Morgan. As such, if net cash is required by one of the U.S. subsidiaries to pay third party suppliers, it is borrowed from Xentel, in whose name the main account for the Applicants' U.S. subsidiaries is held. If Xentel does not have sufficient cash on deposit, to the extent required, RMG will transfer funds to the Xentel account. Similarly, if RMG does not have sufficient cash on deposit, to the extent required, Xentel will transfer funds to the RMG account.

#### **IV. CURRENT STATUS OF THE COMPANY**

##### **A. Immediate Liquidity Issue**

73. Despite the Applicants' implementation of initiatives designed to generate cost savings and stimulate revenue generation, the Applicants face a short term liquidity challenge that renders them incapable of paying all of their liabilities as they become due.

74. To further exacerbate this challenge, the Applicants are under ever increasing pressure from their creditors to pay outstanding accounts, including certain suppliers of goods and services that are critical to the ongoing operation of the Applicants' businesses. At present, the Applicants are under constant threat from their landlords and critical suppliers who threaten to take enforcement actions to bar the Applicants from their business premises and to discontinue the supply of goods and services necessary for the Applicants to operate their businesses.

75. In my business opinion, without an immediate stay of proceedings to prevent their creditors from taking any further enforcement actions, the Applicants' businesses cannot survive.

##### **B. Financial Status**

76. IMSG's annual audited financial statements are prepared on a consolidated basis and include all of the Applicants. The most recent audited statements are for the fiscal year ending December 31, 2011, a copy of which is annexed hereto and marked as Exhibit "S".

77. The Applicants have also prepared unaudited consolidated financial statements for the IMSG Group as at September 30, 2012 which were filed on November 28, 2012, a copy of which is annexed hereto and marked as Exhibit "T".

78. Audited financial statements for the most recent fiscal year ending December 31, 2012 are not yet available as at the date of this Affidavit.

79. While the IMMSG Group has historically been profitable, generating positive net income of approximately \$2.3 million and \$232,000 as recently as the fiscal years ending December 31, 2009 and 2010, over the most recent twenty-four (24) month period it has generally incurred significant losses and, at present, the Applicants lack sufficient liquidity to continue operating their businesses. For the three (3) months ended September 30, 2012, the IMMSG Group generated a loss of \$3.3 million and negative EBITDA from continuing operations of \$2.4 million. For the nine (9) months ending September 30, 2012, the loss generated was \$4.7 million and the negative EBITDA from continuing operations was \$3.0 million. In September 2012, the Applicants discontinued their specialty entertainment business which was conducted by an entity operating under the name iMark Events. iMark Events arranged special fundraising events for the Applicants' clients and was responsible for the event itself in addition to the collection of donations.

80. Although the IMMSG Group has not finalized its audited financial statements for the year ending December 31, 2012, it does expect to report continued material losses from ongoing operations as well as additional restructuring costs and losses from discontinued operations. For the first quarter of 2013, I expect that the IMMSG Group will continue to show negative EBITDA and net losses, although the magnitude of such losses is expected to be materially lower than the quarterly results in 2012. The losses for the first quarter of 2013 can be attributed in part to the numerous operational issues related to mail fulfillment that the Applicants identified in January 2013 and that are described in greater detail below. I believe that the IMMSG Group will generate positive cash flow from ongoing operations shortly following the commencement of these proceedings.

*a) Indebtedness to Secured Lenders*

81. As security for its indebtedness to CIBC under the CIBC Credit Facility, RMG granted CIBC a first ranking security interest in all of RMG's personal property pursuant to a general security agreement (the "CIBC GSA"). The CIBC Credit Facility is also guaranteed by most of the Applicants that are

subsidiaries of RMG, with the exception of RMG GP. The amount owing on the CIBC Credit Facility as at April 8, 2013 is approximately \$2.0 million.

82. As security for its indebtedness to SF LP III under the Convertible Note, IMMSG granted SF LP III a security interest in all of its assets pursuant to the SF LP III Security Agreement as well as a securities pledge agreement pledging as collateral certain of IMMSG's shares in RMG and Direct Contact. The Convertible Note is also guaranteed by two of IMMSG's U.S. subsidiaries, GWE and Target, who also granted SF LP III a security interest in all of their assets. IMMSG also provided a pledge of shares directly held by IMMSG in any of its U.S. subsidiaries as security for its indebtedness under the Convertible Note. The amount owing under the Convertible Note as at April 8, 2013 is approximately \$3.8 million.

83. Other than in respect of equipment leases, purchase money security interests or similar arrangements, no other parties have a registered security interest against any of the Applicants in Ontario, Quebec, Alberta, New Brunswick or Newfoundland, with the exception of SF LP III which has registered a financing statement against IMMSG. Summaries of searches conducted under the *Personal Property Security Act* against each of the Applicants in the Province of Ontario, and equivalent searches conducted in the Provinces of Quebec, Alberta, New Brunswick and Newfoundland are annexed hereto and marked as Exhibit "U".

84. Similarly, other than in respect of equipment leases, purchase money security interests or similar arrangements, no other parties have a registered security interest against any of the Applicants in Delaware. Further searches for Washington, Nevada and Wisconsin will be conducted by the Applicants' U.S. counsel. Summaries of searches conducted pursuant to the *Uniform Commercial Code* in respect of each of the Applicants in Delaware are annexed hereto and marked as Exhibit "V". The searches revealed two registrations in favour of JP Morgan against Xentel and Courtesy Health, however, no amounts are owing to JP Morgan in respect of those registrations and the Applicants intend to seek the discharge of those registrations.

*(b) Other Liabilities*

85. As at April 5, 2013, the most significant liabilities of the Applicants, other than their indebtedness to CIBC (approximately \$2.0 million) and SF LP III (\$3.8 million) described above, are as follows:

	(\$millions)
Unpaid Statutory Withholdings	\$0.2
Tax Authorities	\$1.2
Trade Creditors	\$4.3
Estimated Severance Obligations (as at April 5, 2013)	\$0.9
Estimated Future Obligations Relating to Abandoned Facilities	\$0.8
Rental Arrears	<u>\$0.4</u>
	<b>\$7.8</b>

86. As part of the Applicants' efforts to restructure their businesses, as described in greater detail below, they implemented a number of cash conservation and restructuring initiatives over the past six (6) months. These initiatives were implemented with a view to generating more revenue, generating revenue faster, increasing contribution margin, reducing discretionary spending, lowering fixed costs, deferring certain costs and generating working capital. Notwithstanding the implementation of the restructuring initiatives, the Applicants have been unable to overcome the short term liquidity challenge that renders them incapable of meeting their liabilities as they become due.

**C. Inter-Company Accounts**

87. Since the Applicants operate as an integrated business and employ a centralized cash management system, there are significant inter-company amounts owing among the various members of the IMSG Group at any given time.

88. Intercompany activity within the IMSG Group is quite extensive due to the following:
- (a) the nature of the operations and the regulatory regime in which the Applicants operate creates the need for a complex corporate structure with multiple entities;
  - (b) the desire to create a flexible cost structure and manage volume by having certain contact centres handle outbound telemarketing for multiple lines of business;
  - (c) the desire to have accountability and reporting capability by geography, line of business and contact centre, which do not easily map to legal entity;
  - (d) the desire to have certain procurement services, such as telecom, negotiated on a global basis to benefit from economies of scale and to ensure a consistent standardized level of service and performance; and
  - (e) the consolidation of certain activities that benefit all of the Applicants such as the mail fulfillment operations (described in greater detail below) that are concentrated in the subsidiary, US Billing, and the publishing and design operations that are concentrated in the subsidiary, American Graphics.

89. The IMSG Group uses intercompany accounts to record activities between the various Applicants and these activities are recorded on a legal entity basis. General ledgers are maintained for the active Applicants to record all activity relating to those Applicants. Generally speaking, intercompany activities do not relate to the sale of goods and services between Applicants but instead relate to the movement of funds and/or the payment of expenses by one Applicant for the benefit of another Applicant. By way of example, the following represent the types of intercompany transactions engaged in by the Applicants and the manner in which they are recorded:

- (a) upon the transfer of funds from one Applicant to the other, the transaction is recorded as an intercompany receivable from the receiving entity;
- (b) upon the payment of a direct operating expense, such as an amount paid to a trade creditor or a landlord, by one Applicant on behalf of another Applicant, the payment is recorded as an intercompany receivable; and

- (c) upon payment and subsequent allocation of costs which are billed on a corporate wide basis, the relevant Applicant is charged and this is recorded as an intercompany receivable by the Applicant that made the payment.

*Banking, Clearing and Accounting*

90. The offsets to intercompany transfers are intercompany liabilities between the respective entities. Historically, these intercompany balances have not been reconciled or cleared regularly and have been allowed to accumulate as described below.

91. The balances among the Canadian operations are effectively offset, as they are all owned by the same legal entity. The same offsetting of balances applies to the U.S. operations as they are all owned by the same legal entity.

**D. Causes of Insolvency**

92. The Applicants had negative cash flow from operations in the amount of \$4.7 million for the nine (9) months ending September 30, 2012 and net losses and negative cash flow for the last quarter of 2012 and the first quarter of 2013 are also expected.

93. Pursuant to the Convertible Note, MSG is indebted to SF LP III in the amount of \$3.5 million plus accrued and unpaid interest in the amount of approximately \$300,000.

94. As at April 8, 2013, the Applicants owe the amount of approximately \$2.0 million under the CIBC Credit Facility. CIBC has not demanded payment in respect of the CIBC Credit Facility.

95. MSG is also indebted to certain tax authorities, including the Canada Revenue Agency which is owed approximately \$690,000 for unremitted HST. In addition, there are unremitted statutory withholdings in the amount of \$235,000 relating to payroll obligations for the months of March and April 2013.

96. The Applicants are also indebted to the tax authorities of the States of Tennessee and Wisconsin pursuant to settlement agreements between IMSG and the respective state tax authorities. The settlement agreements date from 2011 and provide for monthly payments. IMSG is current in its monthly payment obligations under the tax settlement agreements and the balance owing is approximately \$268,000. The Cash Flow Forecast (as defined and described below) includes the Applicants' continued payments on account of the tax settlement agreements which will be in the aggregate amount of \$84,200 for the sixteen (16) week period covered by the Cash Flow Forecast.

97. As at April 6, 2013, the Applicants owe trade suppliers in excess of \$4.7 million. Included among those trade suppliers, the Applicants have identified certain suppliers who provide goods and services critical to the Applicants' ongoing operations (the "**Critical Suppliers**"). Attached hereto and marked as Exhibit "**W**" is a list of the Applicants' Critical Suppliers.

98. The amount owed to Critical Suppliers as at April 1, 2013 is approximately \$1.47 million. This amount includes approximately \$254,000 owing to Bell Aliant which provides IT services for the entire IMSG Group. It also includes amounts owing to Cenveo and Marudas in the aggregate amount of approximately \$227,000. Cenveo and Marudas are of critical importance to the Applicants' mail fulfillment operations. Other Critical Suppliers include courier and telephone service providers without whom the Applicants cannot operate their businesses.

#### **E. Efforts to Restructure**

99. Over the past two years, the Applicants have taken steps to address the challenges facing them by implementing a number of initiatives to lower operating costs through process efficiencies and higher productivity. These initiatives were designed first and foremost to provide a better solution for the Applicants' customers in a more cost-effective manner. They were also designed to facilitate delivery of a more integrated solution that leveraged the capabilities of the Applicants' data and donor databases.



100. In 2011, the Applicants commenced the implementation of a restructuring plan that was intended to transform their business. It was also intended to streamline, rationalize and consolidate the separate operations of the former RMG and Xentel companies which came together in March 2010, as both RMG and Xentel continued to operate on two different platforms, structures, systems and operating models resulting in the duplication of staff and physical facilities. The restructuring plan called for significant changes to the Applicants' corporate structure, operations and management to bring these together under a single operating model. These changes included major investments in new systems, processes and facilities with the objective of increasing the Applicants' future profitability and providing clients with greater value-added solutions.

101. The Applicants' restructuring plan resulted in substantial one-time costs due to the termination of many long-serving employees, closure of the Applicants' specialty event business, certain other wind down costs and other significant capital expenditures. Furthermore, until the Applicants' legacy systems and processes could be migrated, the cost to maintain staff and support legacy operation systems has resulted in significant duplicative costs while significant investment and costs have been expended in developing and implementing new systems.

102. The Applicants' restructuring plan has also taken longer than expected to implement and anticipated operating results have not been achieved, resulting in the Applicants' costs being higher than expected and savings being delayed. Notwithstanding the delays and higher than expected costs associated with the Applicants' restructuring plan, in December 2012 the Applicants developed what they believed to be a realistically profitable plan for 2013 and made certain aggressive changes in early 2013 to address both ongoing and legacy cash flow requirements through self-generated cash flow from profitable operations. However, with the recent failure of the Applicants' mail fulfillment operations, described below, the Applicants have continued to sustain significant financial losses despite implementing the restructuring plan.

*Mail Fulfillment Operations*

103. One of the Applicants' core businesses is fundraising on behalf of not-for-profit, charitable and political organizations. In that regard, the Applicants offer an integrated, all-inclusive service from database creation through to processing the collection of donations. The Applicants' outbound tele-fundraising operations obtain pledges on the telephone from consumers on behalf of the Applicants' clients.

104. A significant majority of those pledges are processed on the telephone via the consumer's credit card. The remaining portion of pledges require an initial mail fulfillment package that is sent to consumers along with reminder mailings to collect outstanding pledges. As such, effective mail fulfillment operations are critical to the successful operation of the Applicants' business as donors who do not receive pledge packages generally do not pay.

105. During November and December 2012, a series of issues arose with the Applicants' mail fulfillment operations which are centred in Milwaukee, Wisconsin. These issues were caused by a number of factors, including:

- (a) mail production consolidation;
- (b) an outdated legacy data and print management system began to fail;
- (c) reporting from the aforementioned legacy data system did not provide early warnings to management regarding the system failure;
- (d) cash flow issues affected mail production by delaying the timely delivery of supplies and postage, as well as maintenance, including the servicing of printers; and
- (e) a critical system support staff member for the legacy systems who had been contracted to stay until the new systems were functional prematurely left his position with the Applicants.

106. As a result of the above-noted issues, largely originating from the legacy data and print management system, senior management was forced to accelerate the implementation of new database and print management systems. On December 21, 2012, the Applicants moved the majority of their clients from the old legacy systems and onto the new database and print management systems.

107. Issues with the implementation of the new print management system software resulted in significant delays to the Applicants' mail fulfillment packages with the result that limited mail was delivered to donors during the month of January 2013. These issues first came to light in January 2013.

108. In trying to correct the issues arising from the implementation of the new print management systems which caused a severe backlog in the Applicants' mail fulfillment operations, further errors and delays exacerbated an already difficult situation. As a result, the Applicants' mail fulfillment operations delayed the delivery of packages throughout the month of February 2013.

109. Senior management has determined that the transition from the old data and print management systems to the new systems caused a domino-like effect which included:

- (a) conversion to the new print management system took longer than anticipated and had significant implementation problems;
- (b) as a result of the delay, the haste in converting to the new print management system overwhelmed the mail plant;
- (c) cash flow issues delayed the planned software and equipment upgrades for the consolidated mail plant, a critical component that would have alerted senior management to problems sooner and would have helped resolve problems once they were identified; and
- (d) cash flow issues affected mail production by delaying the timely delivery of supplies and maintenance.

110. The Applicants' senior management and staff have focused on resolving the issues that caused the failure of the Applicants' mail fulfillment operations and a disaster recovery plan has been developed that will be implemented in the future to prevent or mitigate a similar situation in the future.

111. Unfortunately, as set out above, a significant majority of pledges require an initial mail fulfillment package that is sent to consumers and only after customers have honoured those pledges and the pledges have been received do the Applicants receive cash and record any revenue. Combined with an already weakened financial position, the failure of the Applicants' mail fulfillment operations resulted in a severe and acute liquidity crisis that the Applicants cannot hope to weather without filing for protection under the CCAA.

## **V. FILING FOR PROTECTION**

### **A. Overview of Restructuring Plan**

112. The Applicants believe that there is significant going concern value on an entity wide basis which, if protected through a CCAA process, would result in a much greater return to the Applicants' creditors and stakeholders than a bankruptcy or any other proceeding. As integral components of the IMSG Group, it is critical that CCAA protection also be extended to the limited partnerships.

113. The Applicants have been in business for more than 25 years, have enjoyed many years of profitability, have previously survived economic downturns in the industry and have knowledge, experience, expertise and history in their particular lines of business. The Applicants have proven themselves very skilled, capable and effective at raising funds for many worthwhile not-for-profit organizations as well as other organizations and associations that rely on the Applicants' fundraising abilities for part of their operating budgets. It is critical for the preservation and continuation of these client relationships that the Applicants be permitted to restructure their businesses.

114. The Applicants intend to return to Court in the short term to seek approval of an investment, financing or sale solicitation process to identify strategic opportunities. Given that the Applicants are significant participants in this industry, the prospects for a successful process are encouraging.

**B. Cash Flows**

115. The Applicants have prepared estimated cash flow forecasts for the period April 15, 2013 to August 2, 2013 on a consolidated basis (the “**Cash Flow Forecast**”). As described above, the factors influencing the Cash Flow Forecast are both volatile and variable. Attached hereto as Exhibit “X” is a true copy of the Cash Flow Forecast.

116. The proposed Monitor in this proceeding, Duff & Phelps, has reviewed the Cash Flow Forecast. The Cash Flow Forecast indicates that, in the absence of any DIP Financing (as defined below), the Applicants have insufficient cash to continue to operate and operations will cease immediately. The Applicants’ need for protection is immediate and urgent. Their liquidity is insufficient to meet their obligations as they become due.

117. The Applicants’ creditors have made it clear to the Applicants that they will not continue supplying the Applicants with goods and services unless amounts owed to them are paid immediately. Based on the Cash Flow Forecast, there is simply no way that the Applicants can satisfy their creditors’ demands as the lack of liquidity is insurmountable and will result in the Applicants having to cease operations immediately unless DIP Financing is obtained.

**C. DIP Financing**

118. The IMMSG Group will require additional emergency funding in order to implement this restructuring. SF LP III (hereinafter (the “**DIP Lender**”)) has agreed to provide debtor in possession financing (“**DIP Financing**”) to the Applicants up to the aggregate amount of \$1.0 million, subject to the Applicants obtaining an Initial Order in this proceeding on the terms requested granting the DIP Lender a charge over all of the property, assets and undertaking of the Applicants in priority to all creditors (except

CIBC in respect of its existing security against the assets of RMG) to secure the DIP Financing. A term sheet describing the amount, priority, terms and conditions of the DIP Financing to be provided by the DIP Lender (the “DIP Term Sheet”) is annexed hereto and marked as Exhibit “Y”.

119. The DIP Term Sheet provides for a maturity date of August 1, 2013 (the “Maturity Date”) by which date IMMSG, as borrower, is to repay the DIP Financing, in full. The Maturity Date may be extended at IMMSG’s request and with the DIP Lender’s prior written consent for such period as the parties may agree. As security for the DIP Financing, all of IMMSG’s subsidiaries shall absolutely and unconditionally guarantee IMMSG’s indebtedness under the DIP Term Sheet on a joint and several basis and the DIP Lender will be granted the DIP Charge over all assets of the Applicants, subordinate only to the CIBC charge against RMG. IMMSG, with the Monitor’s assistance, shall keep the DIP Lender apprised of IMMSG’s cash flow requirements and provide the DIP Lender with revised cash flow projections on a weekly basis.

120. It is absolutely critical that the Applicants obtain the DIP Financing in order to implement the restructuring of their businesses. The Applicants approached other lenders regarding the provision of DIP financing but were unable to secure such financing on beneficial terms and conditions. Failing to approve and obtain the DIP Financing will be catastrophic for the Applicants and for the prospects of a successful restructuring of their businesses.

121. The Monitor will provide oversight and will report to the Court with respect to the Applicants’ actual results relative to the estimated Cash Flow Forecast during this proceeding.

**D. Chapter 15 Proceeding in the U.S.**

122. As the U.S. subsidiaries are incorporated under the laws of Delaware, Washington, Nevada and Wisconsin, and because the IMMSG Group has operations in the U.S., the Applicants intend to seek recognition of these proceedings as the foreign main proceeding by the U.S. Bankruptcy Court forthwith. Accordingly, if the Initial Order is granted, the Applicants intend to immediately commence auxiliary

proceedings under Chapter 15 of the U.S. *Bankruptcy Code* pursuant to which they will seek to have the CCAA proceedings recognized as a foreign main proceeding and the Initial Order enforced in the U.S. This will include an immediate request for an order granting provisional relief under the U.S. *Bankruptcy Code* and preventing any steps from being taken that would impair the Applicants' ability to carry on their business operations in the U.S., pending further order of the Court.

123. The Chapter 15 Petitions to be filed will name IMSG as the Foreign Representative in respect of each Applicant, in accordance with the draft Initial Order sought in the Application.

**E. The Initial Order**

124. Pursuant to the DIP Term Sheet, the DIP Financing is conditional upon the Applicants obtaining an Initial Order that provides that the DIP Lender shall be entitled to the benefit of a charge (the "**DIP Charge**") on all of the property, assets and undertaking of the Applicants to secure the repayment and the payment of all amounts owing by IMSG and its subsidiaries as guarantors pursuant to the DIP Term Sheet, including all principal, interest, fees, liabilities and obligations under the DIP Credit Documentation (as defined in the DIP Term Sheet).

125. With respect to RMG and solely in respect of RMG, the security interest of CIBC, to the extent such charge is properly perfected against the assets of RMG, shall rank first, followed by the Administration Charge (as defined below), the DIP Charge, the Inter-Company Charge (as defined in the draft Initial Order) and the Directors' Charge (as defined below).

126. The Applicants also request that the Court grant a modest charge in favour of the Applicants' counsel, in favour of the Monitor and its counsel and in favour of the CRO and its counsel, to secure the payment of fees and expenses incurred in connection with this proceeding (the "**Administration Charge**"). The Applicants seek an Administration Charge in the amount of \$300,000, to secure payment of the fees and expenses of the Applicants' counsel, the Monitor and its counsel and the CRO and its counsel.

127. Finally, IMSG's Board of Directors is comprised of four directors, representing a diverse base of business skills and experiences. These directors have considerable knowledge and experience in dealing with the business of the IMSG Group and provide direction to management on several key initiatives. The Applicants are of the view that the continued participation of the existing directors and officers will be a key element to a successful restructuring.

128. I am concerned that certain of the directors and officers may receive advice to resign if they are not granted the protection of a directors' charge as provided for in the draft Initial Order (the "Directors' Charge"). I also believe that, given their experience in the affairs of the Applicants, the services of the directors and officers are essential to a successful proceeding and that the Directors' Charge over all the assets of the Applicants should therefore be granted.

129. Management estimates that the post-filing priority payables in respect of which the directors have personal liability at any point in time during the CCAA process is approximately \$1.3 million, taking into account the maximum wages due at any one time (\$900,000) and accrued vacation pay (\$200,000) and the collection of sales taxes on the Applicants' sales (\$200,000). This amount does not include any termination or severance payments that may at any time be owing. The Applicants therefore request a Directors' Charge in the amount of \$1.3 million to secure such obligations. The Applicants have sought guidance from the Monitor in respect of comparable CCAA filings in suggesting this number.

130. The Directors' Charge requested in the Initial Order will be in addition to the existing directors' and officers' insurance policy (the "D&O Policy"). The D&O Policy has a limit of liability in the amount of \$5.0 million.

131. As described above, due to the integrated manner in which the IMSG Group operates, on occasion cash is advanced to or charges are incurred by one Applicant on behalf of another Applicant. The Applicants propose to maintain their existing cash management and accounting system during this proceeding under the oversight of the Monitor, which is acceptable to the DIP Lender. The Applicants



also want to ensure that no creditor of any individual Applicant is prejudiced by the inter-company flow of funds or incurring of liabilities from and after the date of filing. It is proposed that, to the extent one Applicant advances money to or incurs a cost on behalf of another Applicant, they will obtain a non-priming secured charge from the recipient Applicant for that amount. The intercompany charge will attempt to maintain the relative priority and value of each Applicant's estate and ensure that one Applicant does not finance, at the expense of its stakeholders, the operations of another Applicant. It is proposed that the inter-company charge sought as part of the Initial Order will commence as of the date of the Initial Order.

132. I have reviewed the model form of Initial Order that is used for proceedings before the Commercial Court in Toronto under the CCAA (the "Model Order"). Certain amendments to the Model Order are requested to be made, all of which are necessary to the Applicants' ability to continue business operations in order to effect a successful restructuring.

#### **F. The CRO**

133. IMSG retained Upkar Arora CA, ICD.D, co-founder and Managing Director of Illumina, an independent financial advisory firm that provides financial, operational and strategic advisory services to mid-sized businesses, on September 24, 2012 as interim CFO upon the resignation of IMSG's previous CFO. It was expected that Mr. Arora's appointment would last for three (3) months during which time he would, among other things, assist IMSG's board of directors in selecting a new CFO.

134. Mr. Arora has remained in the position of interim CFO and, in that capacity, currently oversees the financial affairs of the Applicants both in Canada and the U.S.

135. Mr. Arora has intimate knowledge of the Applicants' operations, financial status and efforts that have been undertaken by the Applicants to restructure their business. I believe that Mr. Arora's knowledge and experience will be an asset to the Applicants and will be of great assistance to the Proposed Monitor in guiding the Applicants through this restructuring process.

136. As such, the Applicants request that the Court approve the appointment of the CRO and the monthly fees provided for in the CRO retention agreement executed by IMSG and Illumina dated April 11, 2013 ("CRO Agreement") and attached hereto as Exhibit "Z". The Applicants shall attend before the Court at a later date to seek approval of the success fee provided for in the CRO Agreement.

**G. The Monitor**

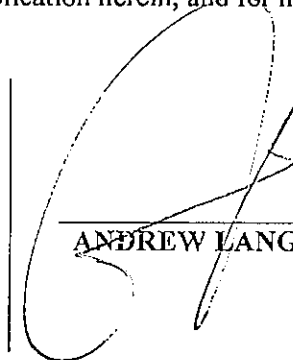
137. The Applicants propose that Duff & Phelps be appointed Monitor for this proceeding. Duff & Phelps is not the auditor for the Applicants. Duff & Phelps has consented to act as Monitor and its written consent is being filed with this Honourable Court. Attached hereto and marked as Exhibit "AA" is a true copy of the Duff & Phelps consent.

138. I swear this Affidavit in support of the Applicants' request that an Initial Order be granted under the CCAA in the form annexed to the Notice of Application herein, and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 11<sup>th</sup> day of  
April, 2013.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

DANNY NUNES

  
\_\_\_\_\_  
ANDREW LANGHORNE

**Schedule "A"**

**List of Applicants**

iMarketing Solutions Group Inc.  
The Responsive Marketing Group Inc.  
GWE Consulting Group (USA) Inc.  
Direct Contact Strategies Inc.  
Front Line Support Inc.  
iMark Events Inc.  
RMG General Partner Inc.  
Cabot Call Centre Inc.  
Engage Interactive Inc.  
RMG Smiths Falls LP.  
RMG Thunder Bay LP  
Xentel Inc. (Delaware)  
Wellesley Corporation Inc. (Delaware)  
US Billing Inc. (Delaware)  
American Graphics & Design Inc. (Wisconsin)  
Courtesy Health Watch Inc. (Delaware)  
Target Outreach Inc. (Nevada)  
Engage Funding Inc. (Delaware)

# **EXHIBIT “B”**



## SERVICE

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

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the limited partnerships listed in Schedule “B” to this Order (the “LPs”) shall enjoy the benefits of and the protections provided to the Applicants by this Order. (The Applicants and the LPs are hereinafter referred to collectively as “IMSG Parties”).

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the IMSG Parties shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “Plan”).

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the IMSG Parties shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”). Subject to further Order of this Court, the IMSG Parties shall continue to carry on business in a manner consistent with the preservation of their business (the “Business”) and Property. The IMSG Parties shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively

“Assistants”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the IMMSG Parties shall be entitled to continue to utilize the central cash management system currently in place as described in the Langhorne Affidavit (the “Cash Management System”) and that any bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the IMMSG Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the IMMSG Parties, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the IMMSG Parties shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the ISMG Parties in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ISMG Parties shall be entitled but not required to pay all reasonable expenses incurred by the ISMG Parties in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the ISMG Parties following the date of this Order.

8. **THIS COURT ORDERS** that the ISMG Parties shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or payable in any other jurisdiction or any other taxation authority which are required to be deducted from employees' wages on or after the date hereof, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ISMG Parties in connection with the sale of goods and services by the ISMG Parties, but only where such Sales Taxes are accrued or



collected after the date of this Order or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or payable in any other jurisdiction or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the IMSG Parties.

9. **THIS COURT ORDERS** that until a real property lease (where the leased premises are occupied by the IMSG Parties or any of them as of the date hereof) is disclaimed or resiliated in accordance with the CCAA, the IMSG Parties shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the IMSG Parties and the landlords from time to time (“Rent”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the IMSG Parties are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the IMSG Parties to any of their

creditors as of this date, except as contemplated in the DIP Credit Documentation, as herein defined; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property, except as permitted hereunder; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or as permitted hereunder.

### **CRITICAL SUPPLIER PAYMENTS**

11. **THIS COURT ORDERS** that the IMSG Parties shall be permitted to make such payments to customers to which the IMSG Parties are indebted and to those suppliers of goods and services as the IMSG Parties, always in consultation with the Monitor and only as permitted under the DIP Credit Documentation (as hereinafter defined), determine to be necessary to permit the IMSG Parties to proceed with the Restructuring (as defined below).

### **RESTRUCTURING**

12. **THIS COURT ORDERS** that the IMSG Parties shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Credit Documentation, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and

- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the IMMSG Parties to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the IMMSG Parties shall provide each of the relevant landlords with notice of the IMMSG Parties’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the IMMSG Parties’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the IMMSG Parties, or by further Order of this Court upon application by the IMMSG Parties on at least two (2) days notice to such landlord and any such secured creditors. If the IMMSG Parties disclaim or resiliate the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the IMMSG Parties’ claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to

prospective tenants during normal business hours, on giving the IMMSG Parties and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the IMMSG Parties in respect of such lease or leased premises and such landlord shall be entitled to notify the IMMSG Parties of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE IMMSG PARTIES OR THE PROPERTY**

15. **THIS COURT ORDERS** that until and including May 11, 2013, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the IMMSG Parties, the CRO, as herein defined, or the Monitor, or affecting the Business or the Property, except with the written consent of the IMMSG Parties and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the IMMSG Parties or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the

IMSG Parties or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the IMSG Parties and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the IMSG Parties to carry on any business which the IMSG Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the IMSG Parties, except with the written consent of the IMSG Parties and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the IMSG Parties or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the IMSG Parties, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the IMSG Parties, and that the IMSG Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for

all such goods or services received after the date of this Order are paid by the IMMSG Parties in accordance with normal payment practices of the IMMSG Parties or such other practices as may be agreed upon by the supplier or service provider and each of the IMMSG Parties and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the IMMSG Parties. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the IMMSG Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the IMMSG Parties whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the IMMSG Parties, if one is filed, is sanctioned by this Court or is refused by the creditors of the IMMSG Parties or this Court.

### **CHIEF RESTRUCTURING OFFICER**

21. **THIS COURT ORDERS** that the appointment of Illumina Partners Inc. using the services of Upkar Arora thereof, as chief restructuring officer of the IMMSG Parties (the “CRO”) and as an officer of this Court is hereby confirmed and approved and the CRO is hereby authorized and empowered to operate and manage the affairs of the IMMSG Parties during the pendency of these CCAA proceedings.

22. **THIS COURT ORDERS** that the IMMSG Parties shall pay the CRO his fees and disbursements, including the fees and disbursements of the CRO’s counsel, if any, in accordance with the CRO’s retention agreement with the IMMSG Parties dated April 11, 2013, annexed as **Exhibit “Z”** to the Langhorne Affidavit save and except that any payment of a success fee thereunder shall be subject to further Order of this Court.

23. **THIS COURT ORDERS** that the CRO shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part.

### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

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

25. **THIS COURT ORDERS** that the directors and officers of the IMMSG Parties, including the CRO, shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,300,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 44 and 46 herein.

26. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the IMMSG Parties’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

#### **APPOINTMENT OF MONITOR**

27. **THIS COURT ORDERS** that Duff & Phelps Canada Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the IMMSG Parties with the powers and obligations set out in the CCAA or set forth herein and that the IMMSG Parties and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the IMMSG Parties pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby authorized and empowered to:



- (a) monitor the IMMSG Parties' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the IMMSG Parties, to the extent required by the IMMSG Parties, in their dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the IMMSG Parties and the DIP Lender which may be used in these proceedings including reporting on the basis agreed with the DIP Lender in the DIP Credit Documentation;
- (d) advise the IMMSG Parties in their preparation of the IMMSG Parties' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, as agreed to by the DIP Lender in the DIP Credit Documentation;
- (e) advise the IMMSG Parties in their development of the Plan and any amendments to the Plan;
- (f) assist the IMMSG Parties, to the extent required by the IMMSG Parties, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the IMMSG Parties, to the extent that is necessary to adequately assess the IMMSG

Parties' business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

29. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable

Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the IMSG Parties and the DIP Lender with information provided by the IMSG Parties in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the IMSG Parties is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the IMSG Parties may agree.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including U.S. counsel), the CRO and counsel (including U.S. counsel) to the IMSG Parties shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the IMSG Parties as part of the costs of these proceedings subject to the passing of their accounts. The IMSG Parties are hereby authorized and directed to pay the accounts of the Monitor, counsel for

the Monitor, the CRO and counsel for the IMSG Parties at regular intervals at such time as each of them may agree with the IMSG Parties and, in addition, the IMSG Parties are hereby authorized to pay to the Monitor, counsel to the Monitor, the CRO and counsel to the IMSG Parties, retainers in such amount as may be agreed with each of them to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, the CRO and counsel to the IMSG Parties shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 44 and 46 hereof.

#### **INTER-COMPANY CHARGE**

36. **THIS COURT ORDERS** that, subject to the terms of the DIP Term Sheet (as defined herein) and the DIP Credit Documentation:

- (a) iMarketing Solutions Group Inc. (“**IMSG**”) is authorized to make loans, advances or transfers of funds to any of the other Applicants or LPs (each an “**IMG Subsidiary**” and collectively, the “**IMSG Subsidiaries**”) from time to time in

accordance with the Cash Management System and the DIP Credit Documentation;

- (b) the IMSG Subsidiaries are hereby authorized to repay funds previously advanced to the IMSG Subsidiaries by IMSG from time to time in accordance with the Cash Management System and the DIP Credit Documentation; and
- (c) for greater certainty, the IMSG Parties shall not be entitled to transfer funds to any direct or indirect subsidiary, affiliate or associate of IMSG or an IMSG Subsidiary that is not a Credit Party under the DIP Term Sheet (as defined therein) without prior consent of the DIP Lender, or Order of this Court.

37. **THIS COURT ORDERS** that IMSG shall be entitled to the benefits of, and is hereby granted, a charge (the “**Inter-Company Charge**”) on the Property of the IMSG Subsidiaries in an amount equal to but not exceeding the aggregate amounts outstanding at any given time based on advances made by IMSG Subsidiaries pursuant to the authorization granted under subparagraph 36 herein from and after the date of this Order. The Inter-Company Charge shall have the priority set out in paragraphs 44 and 46 hereof.

#### **DIP FINANCING**

38. **THIS COURT ORDERS** that IMSG is hereby authorized and empowered to obtain and borrow under a credit facility (the “**DIP Loan**”) from Shotgun Fund Limited Partnership III (the “**DIP Lender**”) for the purposes set out in the DIP Term Sheet, provided that borrowings under such credit facility shall not exceed a total of CAD \$1,000,000 unless agreed to by the DIP Lender and permitted by further Order of this Court.

39. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet amongst IMSG, as borrower, the IMSG Subsidiaries, as guarantors, and the DIP Lender dated as of April 11, 2013 (the “**DIP Term Sheet**”), filed.

40. **THIS COURT ORDERS** that the IMSG Parties are hereby authorized and empowered to execute and deliver the DIP Term Sheet and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**DIP Credit Documentation**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the IMSG Parties are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Credit Documentation for the benefit of the DIP Lender as and when the same become due and are to be performed, notwithstanding any other provision of this Order. For greater certainty, the IMSG Subsidiaries are hereby authorized and directed to execute and deliver the Confirmations (as defined in the DIP Term Sheet), and the New Guarantees (as defined in the DIP Term Sheet), as applicable.

41. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, to secure the repayment and the payment of all amounts owing by the IMSG Parties to the DIP Lender, including all principal, interest, fees, liabilities and obligations under the DIP Credit Documentation, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 44 and 46 hereof. For greater certainty, the DIP Lender’s Charge shall apply to the Inter-Company Charge.

42. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Credit Documentation;
  - (b) upon the occurrence of an event of default under the DIP Term Sheet, the DIP Credit Documentation or the DIP Lender's Charge, the DIP Lender, upon two (2) days notice to IMMSG and the Monitor, and subject to the prior approval of this Court, may exercise any and all of its rights and remedies against the IMMSG Parties, the Guarantors, or the Property under or pursuant to the DIP Term Sheet, the DIP Credit Documentation and the DIP Lender's Charge; and
  - (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the IMMSG Parties or the Property.

43. **THIS COURT ORDERS AND DECLARES** that the claims of the DIP Lender in relation to the DIP Loan are not claims that may be compromised pursuant to the Plan, and shall be treated as unaffected in any Plan, any proposal under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or any other restructuring and no such Plan, proposal or restructuring shall be approved that does not provide for the payment of all amounts due to the DIP Lender pursuant to the terms of the DIP Term Sheet and the DIP Credit Documentation.

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

44. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the DIP Lender's Charge and the Inter-Company Charge, as among them, shall be as follows for all IMSG Parties except The Responsive Marketing Group Inc. ("RMG"):

- First – Administration Charge (to the maximum amount of \$300,000);
- Second – DIP Lender's Charge (to the maximum amount of \$1,400,000);
- Third – Inter-Company Charge; and
- Fourth – Directors' Charge (to the maximum amount of \$1,300,000);

and, solely in respect of the Applicant, RMG, the priorities of the Directors' Charge, the Administration Charge, the DIP Lender's Charge and the Inter-Company Charge, as among them, shall be as follows:

- First – The security interest of Canadian Imperial Bank of Commerce ("CIBC") to the extent such charge is properly perfected against the assets of RMG;
- Second – Administration Charge (to the maximum amount of \$300,000);
- Third – DIP Lender's Charge (to the maximum amount of \$1,400,000);
- Fourth – Inter-Company Charge; and
- Fifth – Directors' Charge (to the maximum amount of \$1,300,000).

45. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the DIP Lender's Charge or the Inter-Company Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.



46. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge, the Inter-Company Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except solely in relation to the assets of RMG, the security interest of CIBC and any Encumbrances that have priority over the security interest of CIBC.

47. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the IMMSG Parties shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the IMMSG Parties also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

48. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Term Sheet, the DIP Credit Documentation and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained

in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the IMMSG Parties, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Credit Documentation shall create or be deemed to constitute a breach by the IMMSG Parties of any Agreement to which they are parties;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the IMMSG Parties entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the DIP Credit Documentation; and
- (c) the payments made by the IMMSG Parties pursuant to this Order, the DIP Term Sheet or the DIP Credit Documentation, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the IMMSG Parties’ interest in such real property leases.

#### **SERVICE AND NOTICE**

50. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii)

within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the IMMSG Parties of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

51. **THIS COURT ORDERS** that the IMMSG Parties and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the IMMSG Parties' creditors or other interested parties at their respective addresses as last shown on the records of the IMMSG Parties and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

52. **THIS COURT ORDERS** that the IMMSG Parties, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://www.duffandphelps.com/services/restructuring/Pages/RestructuringCases.aspx>.

**GENERAL**

53. **THIS COURT ORDERS** that the IMMSG Parties or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

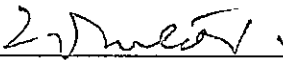
54. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the IMMSG Parties, the Business or the Property.

55. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the IMMSG Parties, the Monitor 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 IMMSG Parties and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or iMarketing Solutions Group Inc. in any foreign proceeding, or to assist the IMMSG Parties and the Monitor and their respective agents in carrying out the terms of this Order.

56. **THIS COURT ORDERS** that each of the IMMSG Parties and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that iMarketing Solutions Group Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

57. **THIS COURT ORDERS** that any interested party (including the IMISG Parties and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

  
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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.



APR 12 2013

Schedule "A"

List of Applicants

iMarketing Solutions Group Inc.

The Responsive Marketing Group Inc.

GWE Consulting Group (USA) Inc.

Direct Contact Strategies Inc.

Front Line Support Inc.

iMark Events Inc.

RMG General Partner Inc.

Cabot Call Centre Inc.

Engage Interactive Inc.

RMG Smiths Falls LP.

RMG Thunder Bay LP

Xentel Inc. (Delaware)

Wellesley Corporation Inc. (Delaware)

US Billing Inc. (Delaware)

American Graphics & Design Inc. (Wisconsin)

Courtesy Health Watch Inc. (Delaware)

Target Outreach Inc. (Nevada)

Engage Funding Inc. (Delaware)

**Schedule "B"**

**List of Limited Partnerships**

RMG Smiths Falls LP

RMG Thunder Bay LP

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF iMARKETING GROUP SOLUTIONS  
INC. and those Companies referred to on Schedule "A"

*Ca 13-10067 OUC*

Court File No.:

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

Proceedings commenced at Toronto

**ORDER**

**Thornton Grout Finnigan LLP**  
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Lawyers for the Applicants



# **EXHIBIT “C”**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 15
XENTEL INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10888 (KG)
Debtors in a Foreign Proceeding.	)	Joint Administration Pending
	)	Related to Docket No. 7

**ORDER GRANTING PROVISIONAL RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of iMarketing Solutions Group Inc., in its capacity as the authorized foreign representative for the above captioned debtors (collectively, the "Debtors") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Ontario Superior Court of Justice, pursuant to sections 362, 364, 365, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code, as amended from time to time (the "Bankruptcy Code") for entry of (a) a provisional order (this "Order"): (i) recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "Initial CCAA Order") issued on April 12, 2013 by the Canadian Court, including, without limitation, the Canadian Court's decision (A) to authorize the Debtors to enter into and perform under that certain DIP Loan, and (B) to grant the DIP Charge to the DIP Lender under the DIP Loan, (ii) granting, on an interim basis, to and for the benefit of the DIP

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Xentel Inc. (6267); Wellesley Corporation Inc. (4092); GWE Consulting Group (USA) Inc. (2629); US Billing Inc. (7752); American Graphics & Design Inc. (7772); Courtesy Health Watch Inc. (1403); and Target Outreach Inc. (9046). The Debtors' main corporate address is 481 University Ave., Toronto, Canada M5G 2E9.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as applicable, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a), of the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and (b) entry of a final order after notice and a hearing (the "Final Order") (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court and extending the protections of this Order to the Debtors on a final basis, (iii) granting the DIP Lender certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having reviewed the Motion, the Petitions for Recognition, the Langhorne Declaration, and the Memorandum of Law, and having considered the statements of counsel with respect to the Motion at a hearing before this Court (the "Hearing"); and due and sufficient notice of the provisional relief sought in the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the provisional relief requested by the

Motion is in the best interest of the Debtors, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, as well as the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the Debtors are subject to a pending "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, and (c) all statutory elements for recognition of the CCAA Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The Foreign Representative has demonstrated that (a) the commencement of any proceeding or action against the Debtors and their respective businesses and all of their assets should be enjoined pursuant to sections 1519, 1521, and 105(a) of the Bankruptcy Code, which protections, in each case, shall be coextensive with the

provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the CCAA Proceeding and an orderly sale process for substantially all of the property and assets used in connection with the business carried on by the Debtors in North America pursuant to the Initial CCAA Order and any other applicable orders of the Canadian Court, for the benefit of all stakeholders; and (b) the relief requested will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

E. The Foreign Representative has demonstrated that unless this Order is entered, there is a material risk that one or more parties in interest will take action against the Debtors or their assets, thereby interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code and interfering with and causing harm to the efforts to maximize the value of the Debtors' assets, including through the sale process, pursuant to the terms of the Initial CCAA Order. As a result, the Debtors will suffer immediate and irreparable harm for which they will have no adequate remedy at law and therefore it is necessary that this Court grant the relief requested without prior notice to parties in interest or their counsel.

F. The Foreign Representative has demonstrated that the incurrence of indebtedness under the DIP Loan, as authorized by the Initial CCAA Order, is necessary to prevent irreparable harm to the Debtors because without such financing, the Debtors will be unable to continue operations, which will significantly impair the value of their assets.

G. The Foreign Representative has demonstrated that the terms of the DIP Loan are fair and reasonable and were entered into in good faith by the Debtors and the

DIP Lender, as defined in the Initial CCAA Order, and the DIP Lender would not have extended financing without conditions precedent requiring a final recognition order by this Court and the interim protection pursuant to sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable by sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, while consideration of final recognition was pending.

H. Absent the relief granted herein, the Debtors may suffer immediate and irreparable injury, loss, or damage for which there is no adequate remedy at law. Further, unless this Order is entered, the assets of the Debtors located in the United States could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in the Debtors suffering immediate and irreparable injury, loss, or damage by, among other things, (a) interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and (b) interfering with or undermining the success of the CCAA Proceeding and the Debtors' efforts to pursue a going-concern sale of their core business for the benefit of all their stakeholders.

I. The Foreign Representative has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of the Debtors' contracts and leases may take the position that the commencement of the CCAA Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration, if permitted and valid, would severely disrupt the Debtors' operations and efforts to consummate a sale, resulting in irreparable damage to the value of the Debtors' business, and causing substantial harm to the Debtors' creditors and other parties in interest.

J. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief.

K. The interests of the public and the public policy of the United States will be served by entry of this Order.

L. The Foreign Representative and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted to the extent set forth herein.
2. The Initial CCAA Order is hereby enforced on an interim basis, including, without limitation, (a) authorizing the Debtors to obtain credit under the DIP Loan and granting the DIP Lender the DIP Lender's Charge, and (b) staying the commencement or continuation of any actions against the Debtors or their assets, and shall be given full force and effect in the United States until otherwise ordered by this Court.
3. While this Order is in effect, the Foreign Representative and the Debtors shall be entitled to the full protections and rights pursuant to section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States; *provided* that upon the occurrence of an event of default under the DIP Credit Documentation (as defined below) or the DIP Lender's Charge, this paragraph shall be deemed to be automatically modified to the

extent necessary to allow the DIP Lender to exercise its rights pursuant to the Initial CCAA Order. Specifically, all persons and entities are hereby enjoined from continuing any action or commencing any additional action involving the Debtors, their assets or the proceeds thereof, (b) enforcing any judicial, quasi-judicial, or administrative judgment, assessment or order, or arbitration award against the Debtors or their assets, (c) commencing or continuing any action to create, perfect, or enforce any lien, setoff, or other claim against the Debtors or any of their property, or (d) managing or exercising control over the Debtors' assets located within the territorial jurisdiction of the United States, except as expressly authorized by the Debtors in writing.

4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, (a) section 362 of the Bankruptcy Code is hereby made applicable in these cases to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States and (b) section 365(e) of the Bankruptcy Code is hereby made applicable to the Debtors in these cases.

5. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

6. As authorized under the Initial CCAA Order, the DIP Lender is hereby granted, on a provisional basis, the DIP Lender Charge, as defined in the Initial CCAA Order, including, among other things, the grant of a first lien on the Debtors' United States assets pursuant to § 364(c)(2) of the Bankruptcy Code (and to the extent necessary



pursuant to Section 364(d) of the Bankruptcy Code after appropriate hearing) in the amount outstanding from time to time under the DIP Loan up to a maximum of USD \$1.4 million, subject to the priorities, terms, and conditions of the Initial CCAA Order, to secure current and future amounts outstanding under the DIP Loan. The obligations under the DIP Loan shall be on a joint and several basis for all Debtors. As set forth in the Initial CCAA Order, all Debtors shall provide Foreign Representative a lien that is a super-priority, first-ranking charge on account of any funds extended by Foreign Representative to any Debtor after the commencement of the Canadian Proceeding (the "Intercompany Liens"). The obligations arising under the DIP Loan shall be further secured by the Intercompany Liens. The DIP Lender Charge shall apply to the Intercompany Liens.

7. The obligations of the Debtors under the DIP Loan shall be an allowed administrative expense claim with priority under section 364(c)(1) of the Bankruptcy Code, subject and subordinate only to the Carve-Out, and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising.

8. To the extent provided in the Initial CCAA Order, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive documents as are contemplated by the DIP Loan (collectively, the "DIP Credit Documentation") or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lender under and pursuant to the DIP

Loan (and in accordance with the budget delivered in connection therewith) including, but not limited to, the fees and expenses of the DIP Lender's Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court.

9. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the DIP Lender in the Initial CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; *provided* that the Debtors are authorized to execute and the administrative agent under the DIP Loan may file or record financing statements, mortgages, or other instruments to further evidence the liens authorized, granted, and perfected hereby and by the Initial CCAA Order.

10. The DIP Credit Documentation has been negotiated in good faith and at arm's-length between the Debtors and the DIP Lender. Any financial accommodations made to the Debtors by the DIP Lender pursuant to the Initial CCAA Order and the DIP Documents shall be deemed to have been made by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lender, and the validity of the indebtedness, and the priority of the liens authorized by the Initial CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or

modification of this Order, on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.


11. No action, inaction or acquiescence by the DIP Lender including funding of the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lender to a charge against the collateral pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. The DIP Lender shall not be subject in any way whatsoever to the equitable doctrine of "marshalling" or any similar doctrine with respect to the collateral.

12. Any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion, unless otherwise ordered by the Court, on not less than seven business days' written notice to Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, Delaware 19801 Attn: Domenic E. Pacitti, Esq., and this Court will hear such motion on a date to be scheduled by this Court.

13. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the Foreign Representative shall not be subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Order. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule of Civil Procedure 65(c) are hereby waived, to the extent applicable.

14. This Court shall retain jurisdiction with respect to any and all matters relating to the interpretation or implementation of this Order.

Date: **April 12**, 2013  
Wilmington, Delaware



The Honorable Kevin Gross  
Chief United States Bankruptcy Judge

# **EXHIBIT “D”**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 15
XENTEL INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10888 (KG)
	)	
Debtors in a Foreign Proceeding.	)	Joint Administration Pending
	)	
	)	Related to Docket Nos. 7 and 18

**ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND  
CERTAIN RELATED RELIEF ON A FINAL BASIS**

Upon the motion (the "Motion")<sup>2</sup> of iMarketing Solutions Group Inc., in its capacity as the authorized foreign representative for the above captioned debtors (collectively, the "Debtors") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Ontario Superior Court of Justice, pursuant to sections 362, 364, 365, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code, as amended from time to time (the "Bankruptcy Code") for entry of (a) a provisional order (the "Provisional Order"): (i) recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "Initial CCAA Order") issued on April [ ], 2013 by the Canadian Court, including, without limitation, the Canadian Court's decision (A) to authorize the Debtors to enter into and perform under that certain DIP Loan, and (B) to grant the DIP Lender's Charge to the DIP Lender under the DIP Loan, (ii) granting, on an interim basis, to and for the

<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Xentel Inc. (6267); Wellesley Corporation Inc. (4092); GWE Consulting Group (USA) Inc. (2629); US Billing Inc. (7752); American Graphics & Design Inc. (7772); Courtesy Health Watch Inc. (1403); and Target Outreach Inc. (9046). The Debtors' main corporate address is 481 University Ave., Toronto, Canada M5G 2E9.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

benefit of the DIP Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as applicable, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and (b) entry of a final order after notice and a hearing, (this "Order") (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court, and extending the protections of the Provisional Order to the Debtors on a final basis, (iii) granting the DIP Lender certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having reviewed the Motion, the Petitions for Recognition, the Langhorne Declaration, and the Memorandum of Law, and having considered the statements of counsel with respect to the Motion at a hearing before this Court (the "Hearing"); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, the Petitions for Recognition, the

Langhorne Declaration, the Memorandum of Law, and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and after due deliberation therefor;

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

D. This chapter 15 case was properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

E. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

F. The CCAA Proceeding is a "foreign proceeding" pursuant to section 101(23) of the Bankruptcy Code.



G. The CCAA Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

H. Canada is the center of main interests of each of the Debtors, and accordingly the CCAA Proceeding is a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

I. The Foreign Representative has demonstrated that the borrowings under the DIP Loan authorized by the Initial CCAA Order are necessary to preserve the value of the Debtors’ business.

J. The Foreign Representative has demonstrated that the terms of the DIP Loan, as approved in the Initial CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lender and that the DIP Lender would not extend financing without the protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the DIP Loan are reasonable under the circumstances.

K. The Foreign Representative has demonstrated that the incurrence of indebtedness under the DIP Loan, as authorized by the Initial CCAA Order, is necessary to prevent irreparable harm to the Debtors and their affiliates because, without such financing, they will be unable to continue operations, which will significantly impair the value of the Debtors’ assets.

L. The Foreign Representative is entitled to all the automatic relief available pursuant to section 1520 of the Bankruptcy Code without limitation.

M. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) and (b) of the Bankruptcy Code.

N. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Petitions for Recognition and the Motion are granted.
2. The CCAA Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.
3. The Initial CCAA Order, including any extensions, amendments, or modifications thereto, is hereby enforced on a final basis and given full force and effect in the United States.
4. All relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to the CCAA Proceeding, the Debtors, and the Foreign Representative, as applicable.
5. Sections 362 and 365(e) of the Bankruptcy Code shall hereby apply with respect to the Debtors and the property of the Debtors that is within the territorial jurisdiction of the United States; provided that upon the occurrence of an event of default under the DIP Credit Documentation (as defined below) or the DIP Lender's Charge, this paragraph shall be deemed to be automatically modified to the extent necessary to allow the DIP Lender to exercise their rights pursuant to the Initial CCAA Order.
6. Subject to sections 1520 and 1521 of the Bankruptcy Code, the CCAA Proceeding and the Initial CCAA Order, and the transactions consummated or to be

consummated thereunder, including without limitation, the DIP Loan and the DIP Lenders' Charge, shall be granted comity and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.

7. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors or the Foreign Representative by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

8. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its expressly authorized representatives and agents, are hereby enjoined from:

- a. execution against any of the Debtors' assets;
- b. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the CCAA Proceeding or the solicitation, implementation, or consummation of the transactions contemplated by the Initial CCAA Order, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States; taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors or any of their property;
- c. transferring, relinquishing, or disposing of any property of the Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative; and
- d. commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights,

obligations, or liabilities to the extent they have not been stayed pursuant to section 1520(a);

provided, in each case, that such injunction shall be effective solely within the territorial jurisdiction of the United States.

9. The obligations of the Debtors under the DIP Loan shall be an allowed administrative expense claim with priority, subject and subordinate only to the Carve-Out, under section 364(c)(1) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising.

10. Pursuant to the Initial CCAA Order, the Debtors are hereby authorized to borrow up to USD \$1 million under and in accordance with the terms of the DIP Loan. In addition, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other documents as are contemplated by the DIP Loan (collectively, the "DIP Credit Documentation") or as may be reasonably requested by the DIP Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lender under and pursuant to the DIP Loan (and in accordance with the budget delivered in connection therewith) including, but not limited to, the fees and expenses of the DIP Lender's Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court. As set forth in the Initial CCAA Order, all Debtors shall provide Foreign Representative a lien that is a super-priority, first-ranking charge on account of any funds extended by Foreign Representative to any Debtor after

the commencement of the Canadian Proceeding (the "Intercompany Liens"). The obligations arising under the DIP Loan shall be further secured by the Intercompany Liens. The DIP Lender Charge shall apply to the Intercompany Liens.

11. Pursuant to section 364 of the Bankruptcy Code and subject to the priorities, terms, and conditions of the Initial CCAA Order, to secure current and future amounts outstanding under the DIP Loan, the DIP Lender are hereby granted the DIP Lender' Charge on all of the Debtors' United States assets up to the maximum amount of the obligations under the DIP Loan; this shall include a first lien on all the Debtors' United States assets pursuant to Section 364(c)(2), and, if necessary, pursuant to Section 364(d) after appropriate hearing.

12. Any obligations incurred by the Debtors as a result of entering into or performing their obligations under the DIP Loan do not and will not constitute preferences, fraudulent conveyances or transfers, transfers at under value, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

13. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the DIP Lender in the Initial CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document, which may otherwise be required under the law of any jurisdiction; provided that the Debtors are authorized to execute and the administrative agent under the DIP Loan may file or record financing statements, mortgages, or other instruments to further evidence the liens authorized, granted, and perfected hereby and by the Initial CCAA Order.

14. The DIP Credit Documentation and the DIP Loan have been negotiated in good faith between the Debtors and the DIP Lender. Any financial accommodations made to the Debtors by the DIP Lender pursuant to the Initial CCAA Order and the DIP Documents shall be deemed to have been made by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lender, and the validity of the indebtedness, and the priority of the liens authorized by the Initial CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

15. Effective upon entry of this Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 105, 506(c) or 552(b) of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of collateral or property after an Event of Default under the DIP Loan, the Initial CCAA Order or this Order.

16. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

17. The Foreign Representative is hereby authorized to apply to this Court to examine witnesses, take evidence, seek production of documents, and deliver information concerning the assets, affairs, rights, obligations, or liabilities of the Debtors, as such information is required in the CCAA Proceeding.

18. The Foreign Representative, the Debtors and/or each of their successors, agents, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.


19. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) neither the Foreign Representative nor the DIP Lender are subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

20. A copy of this Order, confirmed to be true and correct, shall be served, within three business days of entry of this Order, by facsimile, electronic mail, or overnight express delivery, upon all persons or bodies authorized to administer foreign proceedings of the Debtors, all entities against whom provisional relief was granted pursuant to section 1519 of the Bankruptcy Code, all parties to litigation pending in the United States in which any of the Debtors were a party at the time of the filing of the Petitions for Recognition, the Office of the United States Trustee for the District of Delaware, and such other entities as this Court may direct.

21. Such service shall be good and sufficient service and adequate notice for present purposes.

22. This Court shall retain jurisdiction with respect to: (a) the enforcement, amendment, or modification of this Order; (b) any requests for additional relief or any adversary proceeding brought in and through these cases; and (c) any request by an entity for relief from the provisions of this Order, for cause shown.

Date: May 17, 2013  
Wilmington, Delaware

  
The Honorable Kevin Gross  
Chief United States Bankruptcy Judge



# **EXHIBIT “E”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE NEWBOULD )  
TUESDAY, THE 7TH  
DAY OF MAY, 2013

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **iMARKETING SOLUTIONS GROUP  
INC.** and the Companies referred to in Schedule "A"

Applicants



~~AMENDED~~ ORDER *du 5*  
(Stay Extension and SIP Approval)

THIS MOTION, made by the Applicants, for an order, among other things: (a) approving the sale and investment process (the "SIP"), attached as Schedule "B" to this Order; (b) approving the amended agreement (the "Amended CRO Agreement") between iMarketing Solutions Group Inc. and Illumina Partners Inc. ("Illumina") appointing Illumina as the Applicants' Chief Restructuring Officer (the "CRO") and permitting the Applicants to pay a success fee to Illumina, in its capacity as CRO; (c) extending the Stay Period (as defined in the Initial Order of the Honourable Mr. Justice Newbould granted on April 12, 2013 in these proceedings) to August 2, 2013 (the "Initial Order"); (d) requiring American Express Corporate Credit Cards, American Express and any affiliated companies ("collectively, AMEX") to immediately comply with the provisions of the Initial Order; and (e) approving the First Report

of Duff & Phelps Canada Restructuring Inc. (the “**Monitor**”) dated May 2, 2013 (the “**First Report**”), the Supplemental Report of the Monitor dated May 6, 2013 (the “**Supplemental Report**”) and the actions and activities of the Monitor described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Andrew Langhorne sworn May 2, 2013, and the Exhibits thereto (the “**Langhorne Affidavit**”), and the First Report and the Supplemental Report, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Shotgun Fund Limited Partnership III, counsel for the Canadian Imperial Bank of Commerce, counsel for AMEX, no one else appearing although duly served as appears from the affidavit of service of Danny M. Nunes sworn on May 3, 2013.

#### **SERVICE**

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

#### **SALE AND INVESTOR SOLICITATION PROCESS**

2. **THIS COURT ORDERS** that the SIP, attached as Schedule “B” to this Order, be and is hereby approved.

3. **THIS COURT ORDERS** that the Applicants, the CRO and the Monitor be and are hereby authorized and directed to perform their obligations under and take such steps as they consider necessary or desirable in carrying out the SIP and any step taken by the Applicants, the

CRO and the Monitor in connection with the SIP prior to the date hereof be and is hereby approved and ratified.

4. **THIS COURT ORDERS** that the Monitor and the CRO, to the extent either of them assists with the SIP, shall have no personal or corporate liability in connection with the SIP, including, without limitation:

- (a) by advertising the SIP, including, without limitation, the opportunity to acquire all or a portion of the Applicants' assets (the "Assets") or to invest by way of equity or debt in the Applicants' business;
- (b) by exposing the Assets to any and all parties, including, but not limited to, those parties who have made their interests known to the Monitor or the CRO;
- (c) by responding to any and all requests or inquiries in regards to due diligence conducted in respect of the Applicants or the Assets;
- (d) through the disclosure of any and all information regarding the Applicants or the Assets arising from, incidental to or in connection with the SIP;
- (e) pursuant to any and all offers received by the Applicants in accordance with the SIP;  
and
- (f) pursuant to any agreements entered into by any of the Applicants in respect of the sale of any of the Assets or the investment in or financing of the Applicants' business.

5. **THIS COURT ORDERS** that, in connection with the SIP and pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants,

the CRO and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective investors, financiers, purchasers or bidders and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more investment, finance or sale transactions (each, a “**Transaction**”). Each prospective investor, financier, purchaser, or bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Applicants, the CRO or the Monitor; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so.

#### **APPROVAL OF AMENDED CRO AGREEMENT AND SUCCESS FEE**

6. **THIS COURT ORDERS** that the Applicants shall pay the CRO his fees and disbursements, including the fees and disbursements of the CRO’s counsel, if any, in accordance with the Amended CRO Agreement annexed as Exhibit “**F**” to the Langhorne Affidavit and that the Applicants are permitted to pay the success fee set out therein when due.

#### **STAY EXTENSION**

7. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 15 of the Initial Order, be and is hereby extended to and including August 2, 2013.

#### **AMERICAN EXPRESS**

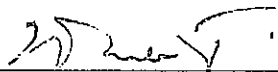
8. **THIS COURT ORDERS** that AMEX shall immediately comply with the provisions of the Initial Order, including but not limited to those provisions of the Initial Order preventing all

persons having agreements with the Applicants for the supply of goods and/or services from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and shall immediately unfreeze and make available to the Applicants, subject to the qualifications below, all credit accounts held by the Applicants with AMEX upon the Applicants (i) paying AMEX, (which term includes Amex Bank of Canada and Amex Canada Inc.) all post-filing amounts currently owing to AMEX by the Applicants under the credit accounts, and (ii) posting a deposit with AMEX in an amount sufficient to cover the Applicants' expected charges on their credit accounts for the following two (2) week period and replenishing said deposit on a going forward basis as required (the "Deposit").

9. **THIS COURT ORDERS** that notwithstanding anything contained in paragraph 8 of this order, under no circumstance shall AMEX be required to provide post-filing credit to the Applicants, and AMEX shall not be required to process any transaction initiated by the Applicants in a credit account, which would result in AMEX providing credit to the Applicants in an amount greater than the Deposit held by AMEX .

**APPROVAL OF THE FIRST REPORT, SUPPLEMENTAL REPORT AND MONITOR'S ACTIVITIES**

10. **THIS COURT ORDERS** that the First Report, the Supplemental Report and the actions and activities of the Monitor as described therein be and they are hereby approved.

  
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**Schedule "A"**

**List of Applicants**

iMarketing Solutions Group Inc.

The Responsive Marketing Group Inc.

GWE Consulting Group (USA) Inc.

Direct Contact Strategies Inc.

Front Line Support Inc.

iMark Events Inc.

RMG General Partner Inc.

Cabot Call Centre Inc.

Engage Interactive Inc.

RMG Smiths Falls LP.

RMG Thunder Bay LP

Xentel Inc. (Delaware)

Wellesley Corporation Inc. (Delaware)

US Billing Inc. (Delaware)

American Graphics & Design Inc. (Wisconsin)

Courtesy Health Watch Inc. (Delaware)

Target Outreach Inc. (Nevada)

Engage Funding Inc. (Delaware)

## SCHEDULE "B"

### iMarketing Solutions Group Inc. Sale and Investment Process Summary

The purpose of the Sale and Investment Process (the "SIP") is to identify one or more purchasers of, or investors in, the IMMSG Group of Companies' ("IMMSG") business with a projected completion date of a transaction or transactions by the middle of July, 2013.

All capitalized terms used but not otherwise defined herein have the meaning given to them in the Order granted by the Ontario Superior Court of Justice (the "Court") on April 12, 2013 (the "Initial Order") in respect of the IMMSG Parties' proceedings commenced under the *Companies' Creditors Arrangement Act* (the "CCAA").

The SIP details are provided below.

- IMMSG's Chief Restructuring Officer ("CRO") has compiled, and with the assistance of the Monitor and the DIP Lender may continue to compile, a list of interested parties ("Interested Parties") and will distribute to them an interest solicitation letter detailing this opportunity. The CRO, with the assistance of the Monitor, will contact all parties identified as well as any additional parties that come to its attention. A confidentiality agreement ("CA") will be attached to the interest solicitation letter;
- The CRO, with the assistance of the Monitor, will prepare a confidential information memorandum ("CIM") which will be made available to Interested Parties that execute the CA. The CIM will provide an overview of the IMMSG's business, property and financial results and be in form and substance acceptable to the DIP Lender;
- Interested Parties who execute the CA will have an opportunity to perform diligence, including reviewing information in a virtual data room;
- A notice will be published in the national edition of *The Globe and Mail* newspaper and, at the discretion of the CRO and the Monitor, in a U.S. periodical. As soon as reasonably practicable after the granting of an order of the Court approving the SIP (the "SIP Order"), IMMSG shall issue a press release setting out the notice and such other relevant information in form and substance satisfactory to the Monitor and the CRO, with Canada Newswire designating dissemination in Canada and the U.S.;
- The CRO, with the assistance of the Monitor, will facilitate diligence efforts by, among other things, responding to questions and coordinating meetings between Interested Parties and IMMSG's management and such other parties as the CRO and/or the Monitor may arrange. All meetings with management will be convened in the presence of a representative of the Monitor;



- Prospective investors shall be required to identify all material terms of their proposed investment to permit evaluation of such proposal but will not be required to submit the terms and structure of their proposed investment in a predetermined prescribed format;
- Parties interested in acquiring assets will be able to refer to a template asset purchase agreement (“APA”) that will be posted in the data room. The form and substance of the APA shall be approved by the DIP Lender prior to it being posted by the Monitor in the data room. Interested Parties will be encouraged to submit offers substantially in the form of the APA, with any changes black-lined against the APA;
- Interested Parties will be entitled to submit offers for IMSG’s businesses and assets on an individual/divisional basis or *en bloc*. Subject to the value of the consideration to be paid, preference will be given to *en bloc* offers;
- The deadline for submission of offers (“Offer Deadline”) will be 5:00 pm EST on the 60<sup>th</sup> day from the date of the SIP Order;
- Offers are to be submitted to the Monitor with a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Monitor) or such other form of deposit as is acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to 10% of the purchase price or investment amount. Offers are to be supported by evidence, satisfactory to the CRO and the Monitor, of financing sufficient to close a transaction within the timelines detailed in these procedures. All offers are to be irrevocable until 120 days after the date of the SIP Order;
- The CRO and the Monitor will evaluate the offers and may seek clarifications and/or a re-bidding of certain offers. Copies of all offers received shall be provided to the DIP Lender on a confidential basis provided that the DIP Lender is not a bidder in the SIP;
- IMSG’s senior management, Canadian Imperial Bank of Commerce (“CIBC”), in its capacity as secured creditor, and the DIP Lender (or any of its affiliates), along with their respective legal counsel, will be consulted on a timely basis during the different phases of the SIP provided that they confirm to the Monitor that they are not bidders in the SIP. Only High level, directional updates may be provided to these parties if they do not confirm that they are not a bidder; and
- Upon completion of definitive documentation, the Monitor will apply to the Court for an order approving one or more offers (“Transaction”), with a transaction projected to be completed as soon as possible following approval of the Transaction by the Court. The Monitor will provide its recommendation to the Court with respect to the Transaction.

Other attributes of the SIP:

- The CRO, with the approval of the Monitor, shall have the right to extend by up to three weeks any deadline in the SIP in order to facilitate the SIP. Further

extensions will require Court approval;

- IMMSG's management and employees are required to assist and support the efforts of the CRO and the Monitor as provided for herein;
- Any transaction will be consistent with insolvency principles, including without material representations and warranties and shall be on an "as is, where is" basis;
- The CRO, with the prior approval of the Monitor, and after consultation with the DIP Lender (provided it is not a bidder), reserves the right to accept one or more offers on behalf of IMMSG and to take such steps as are necessary to finalize and complete an APA or investment agreement or to continue negotiations with a selected number of Interested Parties with a view to finalizing an agreement(s) with one or more of them;
- The CRO, with the approval of the Monitor, and after consultation with the DIP Lender, shall be under no obligation to accept the highest offer, the best offer, or any offer, and the selection of any offer(s) shall be at the discretion of the CRO and the Monitor, after consultation with the DIP Lender (provided it is not a bidder);
- Acceptance of any transaction is subject to the approval of the Court, and the US Bankruptcy Court for the District of Delaware in IMMSG's proceedings under Chapter 15 of the US Bankruptcy Code, if necessary. Neither IMMSG nor the Monitor shall be bound by the terms of any transaction(s) until approval of the courts is obtained;
- The CRO and the Monitor may consider transactions involving a restructuring or investment in IMMSG if, in the opinion of the CRO and the Monitor, the resulting transaction is in the best interests of IMMSG and maximizes value for the benefit of its stakeholders and such transactions are in form and substance acceptable to the DIP Lender;
- The CRO and the Monitor reserve the right to apply to the Court at any time to modify or terminate the SIP if they consider it appropriate in the circumstances or to apply to the Court for advice and directions with respect to the discharge of their powers and duties hereunder; and
- The CRO and the Monitor may, after consultation with the DIP Lender, extend the period between execution of an APA and Court approval of a transaction should the successful bidder require time to obtain regulatory approvals.

## SUMMARY TIMELINE OF IMPORTANT DATES

<b>Sale Process Procedures</b>	<b>Date</b>
Court approval of Sale Process	Day 1
Begin marketing to Interested Parties	Days 2-60
Begin distributing CIM and access to on-line data room	Days 2-60
Management presentations and site visits for select Interested Parties	Days 14-60
Offer Deadline	Day 60
Clarification of offers and re-bidding, if applicable	Days 61-75
Execution of APA	Day 75
Court approval of Transaction(s)	Day 85
Closing(s)	Day 90

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF iMARKETING SOLUTIONS  
GROUP INC. and the Companies referred to in Schedule "A"

Court File No.: CV-13-100067-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED ORDER  
(Stay Extension and SIP Approval)

Thornton Grout Finnigan LLP  
Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, Ontario M5K 1K7

Robert I. Thornton (LSUC# 24266B)

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Fax: 416-304-1313

Lawyers for the Applicants

# **EXHIBIT “F”**

RUN NUMBER : 179  
RUN DATE : 2013/06/28  
ID : 20130628085450.37

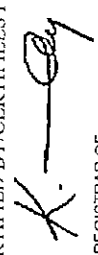
THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : MLHL MARKETING LP  
FILE CURRENCY : 27JUN 2013

ENQUIRY NUMBER 20130628085450.37 CONTAINS 1 PAGE(S), 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THORNTONGROUPTFINNIGAN (MCROBERTS) (DN)  
3200 - 100 WELLINGTON STREET WEST  
TORONTO ON M5K 1K7

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(en/2 11/2008)



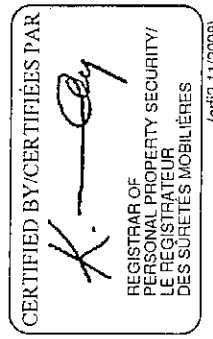
THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : MLHL MARKETING INC.  
FILE CURRENCY : 27JUN 2013

ENQUIRY NUMBER 20130628085418.82 CONTAINS 1 PAGE(S), 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THORNTONGROUFINNIGAN (MCROBERTS) (DN)  
3200 - 100 WELLINGTON STREET WEST  
TORONTO ON M5K 1K7



This report lists registrations in the Personal Property Registry that match the following search criteria:

<b>Province or Territory Searched:</b>	New Brunswick
<b>Type of Search:</b>	Debtors (Enterprise)
<b>Search Criteria:</b>	MLHL MARKETING INC.
<b>Date and Time of Search:</b>	2013-06-28 09:54 (Atlantic)
<b>Transaction Number:</b>	10116086
<b>Searched By:</b>	S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
-------	----------	------------------------------	-----------------	-------

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

An '\*' in the 'Included' column indicates that the registration's details are included within the Search Result Report.

0 registration(s) contained information that **exactly** matched the search criteria you specified.

0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

**END OF REPORT**



This report lists registrations in the Personal Property Registry that match the following search criteria:

---

**Province or Territory Searched:** New Brunswick  
**Type of Search:** Debtors (Enterprise)  
  
**Search Criteria:** MLHL MARKETING LP  
  
**Date and Time of Search:** 2013-06-28 09:54 (Atlantic)  
**Transaction Number:** 10116095  
**Searched By:** S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
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An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

An '\*' in the 'Included' column indicates that the registration's details are included within the Search Result Report.

0 registration(s) contained information that **exactly** matched the search criteria you specified.

0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

***END OF REPORT***

# **EXHIBIT “G”**



June 21, 2013

Canadian Imperial Bank of Commerce  
CIBC Special Loans, Canada  
Retail Risk Management  
25 King Street West, 16th Floor  
Toronto, Ontario  
M5L 1A2

Attention: Ben J. Tucci, General Manager

Dear Sirs:

Re: Letter Agreement Between DIP Lender and CIBC

We refer to the term sheet from Shotgun Fund Limited Partners III (the "DIP Lender") to CIBC annexed as Schedule "A" hereto (the "DIP Lender/CIBC Term Sheet") and to the DIP term sheet (the "DIP Term Sheet") dated as of April 11, 2013 between iMarketing Solutions Group Inc. (the "Borrower") and the DIP Lender approved in the proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA") commenced by the Borrower and the other applicants (collectively, the "Applicants") and to the credit facilities described in the DIP Term Sheet (the "DIP Facility").

In addition to complying with the DIP Lender/CIBC Term Sheet, the Borrower, on its own behalf and on behalf of the other Applicants, agrees with CIBC as follows:

1. The Applicant, Responsive Marketing Group Inc. ("RMG") will continue to provide the same weekly reporting to CIBC as is provided to the DIP Lender in accordance with the DIP Term Sheet.
2. CIBC confirms that its legal counsel, Gowling Lafleur Henderson LLP ("Gowlings"), has incurred costs of approximately \$39,000 thus far in the CCAA proceeding of the Applicants and that it has received an estimate from Gowlings that the total expected legal costs to be incurred by CIBC in the CCAA proceeding will be approximately \$60,000 (including the costs incurred to date). RMG agrees to pay the reasonable legal fees and disbursements of CIBC's counsel as incurred on a monthly basis during the course of the CCAA proceeding up to a maximum cap of \$50,000. Amounts in excess of \$50,000 may be added by CIBC to the indebtedness owed to CIBC by RMG and will bear interest at the same rate as advances by CIBC to RMG.

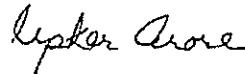
3. Except as required pursuant to the DIP Term Sheet, the Applicants will not voluntarily prepay or repay any advances under the DIP Facility except with the express prior written consent of CIBC.

4. The Borrower confirms that it has received advances to date of \$650,000 from the DIP Lender under the DIP Facility.

5. This Agreement is not intended to supersede, amend or override the terms of the DIP Term Sheet, which remain in full force and effect, unamended.

If the terms hereof are satisfactory to CIBC, please execute and return where indicated below.

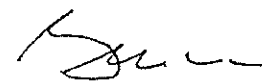
**iMARKETING SOLUTIONS GROUP INC. on its  
own behalf and on behalf of the Applicants**

Per:   
Name: **Upkar Arora**  
Title: **Chief Restructuring Officer**

I have the authority to bind the **Applicants**.

For consideration received, the above terms and conditions are accepted and agreed by CIBC.

CIBC

Per:   
Name: **BEN J. TUCCI**  
Title: **GENERAL MANAGER**

I have the authority to bind the **Bank**.

*Letter Agreement with CIBC to cover the following*

- 1) undertaking of the Company to use reasonable best efforts to obtain a court order providing CIBC with a second charge over the Engage AR (behind the DIP Loan and priority payables)
- 2) undertaking of the Company to provide to CIBC and Argosy weekly monitoring of AR for RMG and Engage, showing the Erosion Amount;
- 3) undertaking of Argosy and the Company to implement the following terms (via court order and/or formal inter-creditor agreement) if the Erosion Amount (using the weekly reporting as the deemed Measurement Date) exceeds \$100,000 for four consecutive weeks]:

CIBC Priority over DIP Security	CIBC's charge over the Engage AR will rank in priority to the DIP Security in an amount equal to the least of the following amounts: 1) the Erosion Amount; 2) \$250,000; and 3) 25% of the value of the eligible Engage AR as at the Measurement Date (value = 75% of AR<90 days).
where:	
"Erosion Amount" means	the amount by which (i) \$567,029, being the value of the eligible RMG AR as at April 12, 2013 (75% of AR<90 days) exceeds (ii) the value of the eligible RMG AR as at the Measurement Date (75% of AR<90 days)
"Measurement Date" means	the earlier of (i) August 31, 2013 and (ii) the cessation of the CCAA process and institution of liquidation proceedings other than at the instance of CIBC.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF iMARKETING GROUP SOLUTIONS  
INC. and those Companies referred to on Schedule "A"

Court File No.: CV-13-10067-00CL

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

Proceedings commenced at **Toronto**

**AFFIDAVIT OF ANDREW LANGHORNE**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
100 Wellington Street West  
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Toronto, Ontario M5K 1K7

**Robert I. Thornton** (LSUC# 24266B)  
E-mail: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)  
**Danny M. Nunes** (LSUC# 53802D)  
E-mail: [dnunes@tgf.ca](mailto:dnunes@tgf.ca)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicants

## **TAB 3**





## **SERVICE**

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

## **MLHL MARKETING INC. and MLHL MARKETING LP**

2. **THIS COURT ORDERS AND DECLARES** that MLHL Marketing Inc. (“**MLHL Inc.**”) is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, applies. MLHL Inc. shall be added to the IMSG Parties, as defined in the Order of the Honourable Mr. Justice Newbould dated April 12, 2013 (the “**Initial Order**”), along with MLHL Marketing LP, which shall enjoy the benefits of and the protections provided to the Applicants in the Initial Order.

## **EXTENSION OF INITIAL ORDER CHARGES**

3. **THIS COURT ORDERS AND DECLARES** that MLHL Inc. and MLHL LP shall be and are hereby subject to any and all charges provided for in the Initial Order, including but not limited to the DIP Lender’s Charge in favour of the DIP Lender.

4. **THIS COURT ORDERS** that the Applicants, including MLHL Inc. and MLHL LP, are hereby authorized to take such actions and execute such documents as are necessary, with the Monitor’s consent, so as to give effect to the relief set out in paragraph 3 herein.

## APPROVAL OF ENGAGE PRIORITY AGREEMENT

5. **THIS COURT ORDERS** that the agreement between iMarketing Solutions Group Inc. (“**IMSG**”) and CIBC dated June 21, 2013 (the “**Engage Priority Agreement**”), attached as Exhibit “**G**” to the Langhorne Affidavit, is hereby approved.

6. **THIS COURT ORDERS** that, subject to further Order of this Court obtained in accordance with the terms of the Engage Priority Agreement, the priority of charges with respect to the accounts receivable of Engage Interactive Inc., shall be as follows:

First – Administration Charge (to the maximum amount of \$300,000);

Second – DIP Lender’s Charge (to the maximum amount of \$1,400,000);

Third – CIBC;

Fourth – Inter-Company Charge; and

Fifth – Directors’ Charge (to the maximum amount of \$1,300,000).

## CRO’S RETENTION OF THIRD PARTIES AND EXTENSION OF CRO INDEMNITY

7. **THIS COURT ORDERS AND DECLARES** that, *nunc pro tunc* to the date of the CRO Agreement (as defined herein), Illumina Partners Inc. (“**Illumina**”), in its capacity as the Applicants’ Court-appointed chief restructuring officer (the “**CRO**”), shall be authorized, at its own expense and only after receiving the consent of IMSG and the Monitor, to engage one or more agents to perform certain of the services provided for in the Court-approved amended CRO engagement agreement (the “**CRO Agreement**”) between Illumina and IMSG dated May 2, 2013, including but not limited to those services in respect of the Applicants’ sale and investment process approved pursuant to the Order of the Honourable Mr. Justice Newbould dated May 7, 2013.

8. **THIS COURT ORDERS** that, *nunc pro tunc* to the date of the CRO Agreement and with the consent of the Applicants and the Monitor, the indemnity set out in paragraph 24 of the Initial Order in favour of the IMMSG Parties' directors and officers, including the CRO, shall be extended to include any agents engaged by the CRO to assist in the performance of certain services provided for in the CRO Agreement.

9. **THIS COURT ORDERS** that IMMSG is hereby authorized, subject to obtaining the Monitor's approval, to make such amendments to the CRO Agreement as may be required to reflect the CRO's authority to engage agents to assist with the performance of services provided for under the CRO Agreement and the extension of the indemnity in favour of the CRO provided for in the Initial Order to those agents as provided for in paragraphs 7 and 8 herein.

---

**Schedule "A"**

**List of Applicants**

iMarketing Solutions Group Inc.

The Responsive Marketing Group Inc.

GWE Consulting Group (USA) Inc.

Direct Contact Strategies Inc.

Front Line Support Inc.

iMark Events Inc.

RMG General Partner Inc.

Cabot Call Centre Inc.

Engage Interactive Inc.

RMG Smiths Falls LP.

RMG Thunder Bay LP

Xentel Inc. (Delaware)

Wellesley Corporation Inc. (Delaware)

US Billing Inc. (Delaware)

American Graphics & Design Inc. (Wisconsin)

Courtesy Health Watch Inc. (Delaware)

Target Outreach Inc. (Nevada)

Engage Funding Inc. (Delaware)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF iMARKETING GROUP SOLUTIONS  
INC. and those Companies referred to on Schedule "A"

Court File No.: CV-13-10067-00CL

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

Proceedings commenced at Toronto

**ORDER**  
**(Adding MLHL Entities and Approval of Engage Priority Agreement)**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, Ontario M5K 1K7

**Robert I. Thornton** (LSUC# 24266B)  
E-mail: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)  
**Danny M. Nunes** (LSUC# 53802D)  
E-mail: [dnunes@tgf.ca](mailto:dnunes@tgf.ca)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicants

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF iMARKETING GROUP SOLUTIONS  
INC. and those Companies referred to on Schedule "A"

Court File No.: CV-13-10067-00CL

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

Proceedings commenced at **Toronto**

**MOTION RECORD**  
(Returnable July 11, 2013)

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
100 Wellington Street West  
Suite 3200  
Toronto, Ontario M5K 1K7

**Robert I. Thornton** (LSUC# 24266B)  
E-mail: [rthornton@tgf.ca](mailto:rthornton@tgf.ca)  
**Danny M. Nunes** (LSUC# 53802D)  
E-mail: [dnunes@tgf.ca](mailto:dnunes@tgf.ca)

Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Applicants