



District of British Columbia  
Division No.: <sup>05-Victoria</sup> ~~03-Vancouver~~  
Court No.: B-240300  
Estate No.: 11-3089419  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY  
  
IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CLOUD DIAGNOSTICS CANADA ULC  
  
**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE )  
JUSTICE HOFFMAN ) 13 /SEPT/2024  
)

THE APPLICATION of Cloud Diagnostics Canada ULC ("**Cloud DX**"), coming on for hearing at Vancouver, British Columbia on the 13<sup>th</sup> day of September, 2024, AND ON HEARING Heather Frydenlund, counsel for Cloud DX, and those other counsel listed in Schedule "A" hereto; AND UPON READING the material filed AND PURSUANT TO the Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3 as amended (the "**BIA**") and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS THAT:

*Service*

1. The time for service of the Notice of Application and materials referred to herein be and is hereby abridged and the Notice of Application is properly returnable today.

2. The time for filing a proposal with the Official Receiver under Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA") be and is hereby extended to 11:59 p.m. on November 5, 2024.

*Interim Financing Charge*

3. Cloud DX is authorized and empowered to borrow pursuant to a term sheet for interim financing dated for reference September 13, 2024 (the "**Fourth DIP Loan Agreement**") between Cloud DX, as borrower, and Constantine Zachos, Gaurav Puri, Mitchell Whyne, James Ku, Larry Johnson, Kelly Lipp, Karl Tourville, Spencer Goldsmith, B&M Miller Equity Holdings Ltd., and Konstantin Othmer, collectively, as lender (in such capacity, the "**Fourth DIP Lender**"). Cloud DX is authorized and empowered to perform its obligations under the Fourth DIP Loan Agreement (subject to obtaining such Court and other approvals as may be required in connection with any step or transaction contemplated therein) and to obtain and borrow under the Fourth DIP Loan Agreement, provided that borrowing under such credit facility shall not exceed the principal amount of \$150,000.00.
4. Cloud DX is authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents and other definitive documents (such documents, together with the Fourth DIP Loan Agreement, collectively, the "**Definitive Documents**"), as are contemplated by the Fourth DIP Loan Agreement or as may reasonably be required by the Fourth DIP Lender pursuant to the terms thereof, and Cloud DX is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Fourth DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provisions of this Order.
5. The Fourth DIP Lender shall be entitled to the benefit of and is granted a charge (the "**Fourth DIP Charge**") on the Charged Property, which Fourth DIP Charge shall not secure an obligation that exists before this Order is made. The Fourth

DIP Charge shall attach to the Charged Property and shall secure all obligations under the Definitive Documents.

6. Notwithstanding any other provisions of this Order, the Fourth DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Fourth DIP Charge or any of the Definitive Agreements.
7. All claims of the Fourth DIP Lender pursuant to the Definitive Documents are not claims that may be compromised pursuant to any proposal under the BIA filed by Cloud DX without the consent of the Fourth DIP Lender and the Fourth DIP Lender shall be treated as unaffected in any proposal filed by Cloud DX under the BIA with respect to any obligations outstanding to the Fourth DIP Lender under or in respect of the Definitive Documents.

*Validity and Priority of Charges Created by this Order*

8. The Administration Charge, the First DIP Charge, the Second DIP Charge, the Third DIP Charge and the Fourth DIP Charge (together, the "**Charges**") each constitute a mortgage, security interest, assignment by way of security and charge on the Charged Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**"), in favour of any person, notwithstanding the order of perfection or attachment, except that the First DIP Charge shall rank subordinate to the interest of the Canada Revenue Agency ("**CRA**") on account of unpaid source deductions owing by Cloud DX to CRA and the Fourth Dip Charge shall rank subordinate to the First Dip Charge, Second Dip Charge, Third Dip Charge, the interest of CRA.
9. The priorities as among the Charges shall be:
  - First – the Administration Charge (\$200,000.00);
  - Second – the Third DIP Charge (\$700,000.00);

Third – the Second DIP Charge (\$400,000.00);

Fourth – (subject to CRA) - the First DIP Charge (\$120,000.00);

Fifth – the Fourth DIP Charge (\$150,000.00).

10. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and the Charges shall be effective as against the Charged. Property and 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 failure to file, register or perfect such Charges.
  
11. The Charges and Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the Charges (the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such application(s); (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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (each, an "**Agreement**") which binds Cloud DX, 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 Definitive Documents shall create or deemed to constitute a breach by Cloud DX of any Agreement to which it is a party;
  
  - b) none of the Chargees shall have any liability to any person entity whatsoever as a result of any breach of any Agreement caused by or

resulting from Cloud DX entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

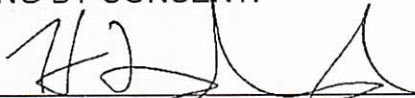
- c) the payments made by Cloud DX pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

- 12. The Charges created by this order over leases of real property in Canada shall only be a charge of Cloud DX's interest in such real property leases.

*Endorsement*

- 13. Endorsement of this Order by counsel appearing on this application, other than counsel for Cloud DX, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of Heather A. Frydenlund  
 Party  Lawyer for the applicant

BY THE COURT

  
REGISTRAR IN BANKRUPTCY

**Schedule A – List of Counsel**

Owen Bird Law Corporation  
#2900 733 Seymour St  
Vancouver, BC V6B 0S6  
Attn: Jonathan Williams

~~Torkin Manes LLP  
#1500 151 Yonge St  
Toronto, ON M5C 2W7  
Attn: Stewart Thom~~

~~Department of Justice Canada  
#900 840 Howe Street  
Vancouver, BC V6Z 2S9  
Attn: Christine Matthews~~

Department of Justice Canada  
#900 840 Howe Street  
Vancouver, BC V6Z 2S9  
Attn: Aminollah Sabzevari

*No one else appearing*