

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, RSO 1990, c C43 and SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

B E T W E E N :

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

**MOTION RECORD OF THE APPLICANT  
(returnable June 10, 2013)**

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3

Brett Harrison LS#: 44336A  
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Fax: (416) 865-7048  
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Lawyers for the Applicant

**TO:** THE SERVICE LIST

**AND TO:** Ontario Ministry of Labour  
400 University Avenue, 14<sup>th</sup> Floor  
Toronto, ON  
M7A 1T7

Attention: Legal Department

**AND TO:** Office of the Superintendent of Bankruptcy  
25 St. Clair Avenue E, 6<sup>th</sup> Floor  
Toronto, ON M4T 1M2  
Tel: 1-877-376-9902  
Fax: 416-973-744

**AND TO:** Directors of PRACS Canada

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**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, RSO 1990, c C43 and SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

B E T W E E N :

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

**NOTICE OF MOTION  
(returnable June 10, 2013)**

The Applicant, Freeport Financial LLC (“**Freeport**”), will make a motion to a judge, on Monday, June 10, 2013, at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

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

THE MOTION IS FOR AN ORDER:

- (a) lifting the stay of proceedings against the Respondent, PRACS Institute Canada B.C. LTD. (“**PRACS Canada**”), granted by order of this Court dated March 22, 2013 (the “**Receivership Order**”) for the sole purposes of filing and serving an application for a bankruptcy order and dispensing with further notice of same;

- (b) abridging the time for service and validating the service of this Notice of Motion and the Motion Record so that this Motion is properly returnable June 10, 2013 and dispensing with further service thereof; and
- (c) Such other relief as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

**Background**

- (a) PRACS Canada is a wholly owned subsidiary of PRACS Institute Holdings, LLC, a Delaware limited liability company (the “**Holding Company**”);
- (b) The Holding Company is the holding company for the PRACS Institute group of companies (the “**PRACS Institute**”). The PRACS Institute provided early phase clinical research services for the development of drugs and medical services and operated its business through entities controlled, directly or indirectly, by the Holding Company;
- (c) The PRACS Institute operated several research facilities and bioanalytical laboratories in North America. PRACS Canada operated certain of those facilities in the Greater Toronto Area;
- (d) Freeport acted as agent for certain financial institutions (the “**Lenders**”) in financing the Holding Company’s purchase of substantially all the assets of the Cetero Group, the predecessor of the PRACS Institute, as part of proceedings in respect of the Cetero Group under Part IV of the

*Companies' Creditors Arrangement Act*, RSC 1985, c C-36, recognizing proceedings commenced by the Cetero Group under Chapter 11 of the United States Bankruptcy Code, in 2012;

- (e) On March 22, 2013 Freeport applied for, and was granted, an order appointing PricewaterhouseCoopers Inc. (“**PwC**”) as receiver (the “**Receiver**”), without security, over all of the assets, undertakings and property (the “**Property**”) of PRACS Canada pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, RSO 1990, c C43;
- (f) At the time of the Receiver’s appointment, PRACS Canada was indebted to the Lenders in the approximate amount of \$4,219,662;
- (g) The Lenders are the senior secured creditors of PRACS Canada;
- (h) Prior to the Receiver’s appointment, PRACS Canada terminated all 216 of its active employees and, to the extent that any employees were not terminated by then, the Receivership Order terminated any remaining employees. On the date of the Receiver’s appointment, the directors of PRACS Canada resigned and the Holding Company, together with its United States subsidiaries, filed voluntary bankruptcy petitions under Chapter 7 of the United States Bankruptcy Code;

### **The Receivership**

- (i) With the support of Freeport and the Lenders, the Receiver conducted a compressed and focused sales process to sell PRACS Canada's right, title and interest in and to the Property. That process resulted in a sale transaction for which the Receiver sought court approval on May 1, 2013 (the "**Sale Transaction**"). This Court approved the Sale Transaction by Order dated May 1, 2013;
- (j) The Sale Transaction closed on May 3, 2013 and yielded proceeds of approximately \$3.6 million dollars;
- (k) In connection with, and since the appointment of the Receiver, the Lenders have incurred legal fees in the approximate amount of \$110,000. Those fees are subject to the security agreement between PRACS Canada and the Lenders;
- (l) From the appointment of the Receiver to May 22, 2013 a further approximate amount of \$52,523.99 in interest has accrued on PRACS Canada's indebtedness to the Lenders;
- (m) The Receiver indicates that approximately \$3.1 million was available for distribution following the closing of the Sale Transaction and as at May 24, 2013;

- (n) The Receiver also indicates that accounts receivable of approximately \$500,000 are outstanding and owing (the “**Receivables**”). The Receiver expects the majority of the Receivables to be collected;
- (o) PRACS Canada has not actively carried on business since the commencement of the receivership and the main purpose of the receivership – the sale of substantially all of PRACS Canada’s assets – has been completed;
- (p) The receivership proceedings are substantially spent because the only remaining issues are the collection of the Receivables and the distribution of the pool of money in PRACS Canada’s accounts;
- (q) In addition, approximately \$100,000 presently subject to statutory deemed trusts under Ontario employment legislation and federal taxing legislation (the “**Deemed Trust Amounts**”) would be distributed in priority to PRACS Canada’s secured creditors in a receivership but would be available for distribution to PRACS Canada’s secured creditors in a bankruptcy through the priority scheme set out in the BIA;
- (r) The Applicant has met the technical requirements for bankruptcy and the priority scheme and distribution provisions of the BIA are appropriate in these circumstances; and
- (s) Such other grounds as counsel may advise and this Court may permit.

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

- (a) The affidavit of Donald T. Bobbs sworn May 28, 2013;
- (b) Such other material as counsel may advise and this Court may accept.

May 28, 2013

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON, M5J 2T3

Brett Harrison LS#: 44336A  
Tel: (416) 865-7932  
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Email: brett.harrison@mcmillan.ca

Lawyers for the Applicant

**TO:** THE SERVICE LIST

**AND TO:** Directors of PRACS Canada

**AND TO:** Ontario Ministry of Labour  
400 University Avenue, 14<sup>th</sup> Floor  
Toronto, ON  
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Attention: Legal Department

**AND TO:** Office of the Superintendent of Bankruptcy  
25 St. Clair Avenue E, 6<sup>th</sup> Floor  
Toronto, ON M4T 1M2  
Tel: 1-877-376-9902  
Fax: 416-973-7440



FREEPORT FINANCIAL LLC  
Applicant

and

PRACS Institute Canada B.C. Ltd.  
Respondent

Court File No: CV-13-10046-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(returnable June 10, 2013)**

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON, M5J 2T3

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Lawyers for the Applicant

TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, RSO 1990, c C43 and SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

B E T W E E N :

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

**AFFIDAVIT OF DONALD T. BOBBS  
(sworn May 28, 2013)**

I, Donald T. Bobbs, of the City of River Hills, in the State of Wisconsin, United States of America, MAKE OATH AND SAY:

1. I am the Senior Portfolio Manager, Credit, of Stark Investments, an affiliate of the Applicant, Freeport Financial LLC ("**Freeport**"), Agent for the Lenders (as defined below). As such I have personal knowledge of the facts deposed to herein except where I have relied on information from others in which case I have stated the source of my information and believe it to be true.
2. I swear this affidavit in support of a motion by Freeport to lift the stay granted by this Court in the Respondent's receivership proceedings for the purpose of filing an application for

a bankruptcy order, to waive the notice period provided for in Rule 70(1) of the *Bankruptcy and Insolvency General Rules*, and to obtain a bankruptcy order against the Respondent.

3. The Lenders are unsecured creditors of PRACS Institute Canada B.C. LTD. (“**PRACS Canada**”) for the amount of its deficiency claim (as described below) such that it is capable of bringing an application for a bankruptcy order. PRACS Canada has completed a sale of substantially all of its assets, is no longer operating as a going-concern business and, as such, the receivership proceedings are substantially complete.

### **Background**

4. On March 22, 2013 Freeport applied for, and was granted, an order appointing PricewaterhouseCoopers Inc. (“**PwC**”) as receiver (the “**Receiver**”), without security, over all of the assets, undertakings and property (the “**Property**”) of PRACS Canada pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended (the “**Receivership Order**”). A copy of the Receivership Order is attached as Exhibit “A.”

5. In support of its application, Freeport filed the affidavit of Anthony Marino sworn March 22, 2013 (the “**Marino Affidavit**”). A copy of the Marino Affidavit, without Exhibits, is attached as Exhibit “B.”

6. As described in greater detail in the Marino Affidavit, PRACS Canada is a wholly owned subsidiary of PRACS Institute Holdings, LLC, a Delaware limited liability company (the “**Holding Company**”). The Holding Company is the holding company for the PRACS Institute group of companies (the “**PRACS Institute**”). The PRACS Institute provided early

phase clinical research services for the development of drugs and medical services and operated its business through entities controlled, directly or indirectly, by the Holding Company.

7. The PRACS Institute operated several research facilities and bioanalytical laboratories in North America. PRACS Canada operated certain of those facilities in the Greater Toronto Area.

8. The Holding Company and its direct and indirect subsidiaries purchased substantially all the assets of the Cetero Group, the predecessor of the PRACS Institute, as part of recognition proceedings in respect of the Cetero Group under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, in 2012. Freeport acted as agent for certain financial institutions (together, the "**Lenders**") in financing that purchase. Certain of the Lenders extended further financing to PRACS Canada on three occasions before applying to appoint the Receiver.

9. At the time of the Receiver's appointment, PRACS was indebted to the Lenders in the approximate amount of \$4,219,662. Additional interest, in the amount of approximately \$52,523.99, has accrued on this debt from the Receiver's appointment to May 22, 2013. Further, the Lenders have incurred legal fees in the approximate amount of \$110,000 in connection with these proceeding through to the end of April 30, 2013 and those fees are a further obligation of PRACS Canada secured by the security agreement described in paragraph 13 of the Marino Affidavit and attached hereto as Exhibit "C."

10. Prior to the Receiver's appointment, PRACS Canada terminated all 216 of its active employees and to the extent that any employees were not terminated by then, the Receivership

Order terminated any remaining employees. On the date of the Receiver's appointment, the directors of PRACS Canada resigned and the Holding Company, together with its United States subsidiaries, filed voluntary bankruptcy petitions under Chapter 7 of the United States Bankruptcy Code.

### **The Receivership**

11. The First Report of the Receiver dated April 25, 2013 (the "**First Report**") described in detail the Receiver's activities to the date of the First Report. A copy of the First Report without Appendices is attached as Exhibit "D."

12. With the support of Freeport and the Lenders, the Receiver conducted a compressed and focused sales process to sell PRACS Canada's right, title and interest in and to the Property. That process resulted in a sale transaction for which the Receiver sought court approval on May 1, 2013 (the "**Sale Transaction**"). This court approved the Sale Transaction by Order dated May 1, 2013, a copy of which is attached as Exhibit "E."

13. The Sale Transaction closed on May 3, 2013 and yielded proceeds of approximately \$3.6 million dollars.

### **The Lenders Are Unsecured Creditors of PRACS Canada In Respect of the Deficiency of Their Secured Claim**

14. The Receiver has provided Freeport with a Statement of Receipts and Disbursements for the period from March 22, 2013 to May 24, 2013 (the "**Statement of R&Ds**"). A copy of the Statement of R&Ds is attached as Exhibit "F."

15. The Statement of R&Ds indicates that approximately \$3.1 million was available for distribution as at May 24, 2013. The Receiver also indicates that accounts receivable of approximately \$500,000 are outstanding and owing (the “**Receivables**”). The Receiver has advised the Lenders that it expects the majority of the Receivables to be collected.

16. I understand from the Receiver that PRACS Canada has not actively carried on business since the commencement of the receivership, substantially all of its assets have been sold and the primary remaining issues are the collection of the Receivables and the distribution of the pool of money in the hands of the Receiver.

17. The \$3.1 million currently available for distribution includes approximately \$146,000 in priority claims, which, I am advised by counsel, have priority over the claims of PRACS Canada’s secured creditors in a receivership. Of that \$146,000, approximately \$27,300 is on account of vacation pay subject to a deemed trust under Ontario employment legislation, and approximately \$70,300 is on account of harmonized sales tax in respect of the pre-receivership period which is subject to a deemed trust under federal taxing legislation (together, the “**Deemed Trust Amounts**”). I am advised by Brett Harrison, a Partner at McMillan LLP, that if PRACS Canada were adjudged bankrupt, the Deemed Trust Amounts would be subject to the priority scheme set out in the BIA and the Lenders’ secured claim would have priority over such amounts. Accordingly, in a bankruptcy, a further approximate amount of \$97,600 (i.e., \$27,300 in vacation pay plus \$70,300 in HST) would be available for distribution to PRACS Canada’s secured creditors.

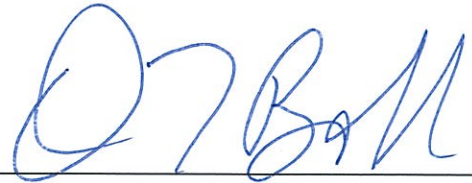
18. Assuming the entirety of the Receivables is recovered and distributed together with the \$3.1 million presently available for distribution, and assuming the approximate Deemed

Trust Amounts of \$97,600 were available for distribution to the Lenders in a bankruptcy, the Lenders would still have an unsecured deficiency claim against PRACS Canada for the further approximate amount of at least \$680,000.

SWORN BEFORE ME at the City of  
St. Francis, in the State of Wisconsin on  
May 28, 2013.



A Notary Public in and for the State of  
Wisconsin

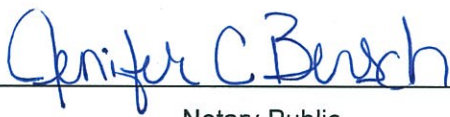


Donald T. Bobbs



**TAB A**

This is Exhibit "A" referred to in  
the Affidavit of DONALD T. BOBBS,  
sworn before me this 28<sup>TH</sup> day  
of May, 2013.

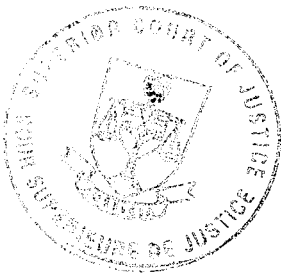
  
\_\_\_\_\_  
Notary Public

Court File No. CV-13-10046-0002  
HJH

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 22<sup>nd</sup> DAY  
)  
JUSTICE WILTON-SIEGEL ) OF MARCH, 2013

B E T W E E N :



FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C43, AS AMENDED and SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

**ORDER**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing PricewaterhouseCoopers Inc. ("**PwC**") as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and property of PRACS Institute Canada B.C. LTD. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Anthony Marino sworn March 22, 2013 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and Respondent, and on reading the consent of PwC to act as the Receiver,

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, PwC is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (d) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that the Receiver shall not manage, operate, or carry on the business of the Debtor.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in



respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER**

11. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

14. THIS COURT ORDERS that <sup>the employment of all persons who are currently</sup> ~~all~~ <sup>effective</sup> employees of the Debtor shall be ~~deemed to be~~ terminated immediately upon the appointment of the Receiver. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Hans

#### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **GENERAL**

25. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

27. 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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. THIS COURT ORDERS that the Receiver 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 the Receiver 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.

29. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

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



MAR 22 2013



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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:



FREEPORT FINANCIAL LLC  
Applicant

and

PRCS INSTITUTE CANADA B.C. LTD.  
Respondent

Court File No: CV 13-10046-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

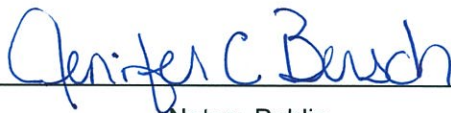
**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON, M5J 2T3

Brett Harrison LS#: 44336A  
Tel: 416-865-7932  
Fax: 416-865-7048  
email: Brett.Harrison@McMillan.ca

Lawyers for the Applicant

**TAB B**

This is Exhibit "B" referred to in  
the Affidavit of DONALD T. BOBBS,  
sworn before me this 28<sup>TH</sup> day  
of May, 2013.

A handwritten signature in blue ink, reading "Jennifer C. Busch", is written over a horizontal line.

Notary Public

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N :

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C43, AS AMENDED and SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

**AFFIDAVIT OF ANTHONY MARINO  
(sworn March 22, 2013)**

I, Anthony Marino, of the City of St. Francis, Wisconsin, MAKE OATH AND SAY:

1. I am Associate General Counsel at Stark & Roth LLC, an affiliate of Freeport Financial LLC, Agent for the Lenders (as defined below), and as such have knowledge of the information to which I hereinafter depose. Where I do not have personal knowledge I have stated the source of my information and believe it to be true.

**A. OVERVIEW**

2. The respondent, PRACS Institute Canada B.C. LTD. (the “**PRACS Canada**”) is a wholly owned subsidiary of PRACS Institute Holdings, LLC, a Delaware limited liability company (the “**Holding Company**”), the holding company for the PRACS

Institute group of companies (the “**PRACS Institute**”). An organizational chart for the PRACS Institute is attached as Exhibit “1.”

3. The PRACS Institute was provider of early phase clinical research services for the development of drugs and medical services. It operated its business through entities controlled, directly or indirectly, by the Holding Company.

4. The PRACS Institute operated clinical research facilities and bioanalytical laboratories in North Dakota, Florida, Missouri, Texas and Ontario. PRACS Canada, a British Columbia corporation registered to carry on business in Ontario, operated PRACS Institute’s facilities in the Greater Toronto Area.

5. PRACS Institute formerly operated as the Cetero Group of companies. The Cetero Group carried out an asset sale through a proceeding under Chapter 11 of the Unites States Bankruptcy Code in 2012, which bankruptcy proceeding was recognized by this court under the cross-border proceedings provisions of the *Companies’ Creditors Arrangement Act*. PricewaterhouseCoopers Inc. was appointed as the Information Officer in these cross-border recognition proceedings.

6. In 2012, the Lenders formed the corporate entities comprising the PRACS Institute for the purpose of making a combination credit bid and cash bid for the assets of the Cetero Group, which bid was accepted by the Cetero Group. The sale was approved by the US bankruptcy court, and such approval was recognized by this court. As part of the purchase price, the PRACS Institute assumed a portion of the Lenders’ prepetition debt, and the Lenders also provided incremental financing to help fund operations of the PRACS Institute from and after the closing of the sale in June 2012.

7. The Applicant seeks the appointment of a receiver over the property of PRACS Canada to preserve and protect the collateral of the Lenders and to facilitate an orderly realization of its assets.

## **B. DEBT AND SECURITY**

8. In connection with the purchase of substantially all assets of Cetero Group, the Holding Company, PRACS Canada and their direct and indirect subsidiaries defined as "Loan Parties" in the Credit Agreement (as defined below) entered into a credit agreement, dated as of June 20, 2012 (the "**Closing Date**") (as amended, restated, modified or supplemented, the "**Credit Agreement**") with the financial institutions party thereto as lenders (the "**Lenders**"), and Freeport Financial LLC, as agent (in such capacity, the "**Agent**") and Lead Arranger. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement. A copy of the Credit Agreement is attached as Exhibit "**2**".

9. Pursuant to the Credit Agreement, on the Closing Date the Lenders extended (i) a \$20,000,000 Revolving Loan (which was partially drawn on the Closing Date, and has since been fully drawn), (ii) a \$15,300,000 US Term Loan A, (iii) a \$5,000,000 US Term Loan B, (iv) a \$31,000,000 US Term Loan C, and (v) a \$4,000,000 Canadian Term Loan C (collectively, the "**Closing Date Loans**").

10. In November 2012, the PRACS Institute, having exhausted its Revolving Loan availability, requested further loans from the Lenders to fund operations and requested that the Lenders waive certain defaults under the Credit Agreement. The Agent, certain Lenders, and the PRACS Institute amended the Credit Agreement pursuant to a limited

waiver and first amendment to the Credit Agreement, dated as of November 6, 2012, pursuant to which certain Lenders waived specified defaults and extended a \$3,000,000 superpriority loan (the “**US Additional Term Loan**”) to the PRACS Institute.

11. In further need of funds, the PRACS Institute requested additional loans from the Lenders in February, 2013. The Agent, certain Lenders, and the PRACS Institute entered into a second amendment to Credit Agreement, dated as of February 22, 2013, pursuant to which certain Lenders extended a \$580,000 superpriority loan (the “**US LIFO Loan**”).

12. In March, 2013, the PRACS Institute requested further funds from the Lenders for amounts sufficient to pay payroll and obligations related thereto. On March 15, 2013, the PRACS Institute, the Lenders, and the Agent entered into a third amendment to Credit Agreement, pursuant to which certain Lenders extended \$3,380,000 of superpriority loans (inclusive of closing fees added to the principal amount of such loans) (the “**Emergency Advances**,” and together with the Closing Date Loans, the US Additional Term Loan, and the US LIFO Loan, and all other obligations under the Credit Agreement, the “**First Lien Obligations**”). The amount of the First Lien Obligations is approximately \$87,099,496 in the aggregate.

13. The First Lien Obligations are guaranteed pursuant to a guaranty, dated as of June 20, 2012, by the PRACS Institute entities other than PRACS Canada in favor of the Agent. The First Lien Obligations are secured by first priority liens and security interests in substantially all assets of the PRACS Institute entities other than PRACS Canada granted pursuant to a security agreement, dated as of June 20, 2012 (the

**“Security Agreement”**), by and among the Agent and the PRACS Institute entities other than PRACS Canada. The First Lien Obligations are also secured by mortgages covering certain real property of the PRACS Institute in Fargo, North Dakota, San Antonio, Texas, and St. Charles, Missouri. A copy of the Security Agreement is attached as Exhibit **“3”**.

14. The Canadian Term Loan C and the other obligations of PRACS Canada under the Credit Agreement (the **“PRACS Canada Obligations”**) are secured by first priority liens and security interests granted pursuant to the Security Agreement by and among the Agent and PRACS Canada. The PRACS Canada Obligations are approximately \$4,219,662 in the aggregate.

15. The Security Agreement provides the Agent with the right to appoint a receiver on default. The PRACS Institute’s Board of Director’s authorization of a Chapter 7 filing described below constitutes an event of default under the Security Agreement and the security granted by PRACS Canada has become enforceable.

16. Based on information provided by Michael Gries (**“Gries”**), the Chief Restructuring Officer of the PRACS Institute, I understand that the realizable value of the assets of PRACS Canada will be significantly less than the amount owing to the Lenders.

17. Our counsel have conducted a search under the Personal Property Security Act registry in Ontario and British Columbia and there are no registrations against the Debtor other than those of the Lenders. A copy of the searches conducted on March 6, 2013 and March 21, 2013 are attached as Exhibit **“4”**.



**C. THE BUSINESS OF THE PRACS INSTITUTE**

18. As a provider of early phase clinical research services for the development of drugs and medical services, the PRACS Institute provided testing services for pharmaceutical and biotechnology companies.

19. I am advised by Gries that as of March 1, 2013, the PRACS Institute employed approximately 1,035 people. Approximately 800 of its employees were located in the US, and approximately 235 were in the Greater Toronto Area. PRACS Canada does not have a defined benefit pension plan.

20. PRACS Institute had three primary lines of business: (a) clinical pharmacology services; (b) bioanalytical services, and (c) scientific affairs services.

(a) Clinical Pharmacology Services: PRACS Institute provided clinical pharmacology services, operating five clinical pharmacology facilities which are located in North Dakota, Florida, Missouri and in Ontario.

(b) Bioanalytical Services: PRACS Institute operated two bioanalytical laboratories located in Ontario.

(c) Scientific Affairs Services: PRACS Institute also offers various scientific affairs services.

**D. PRACS INSTITUTE'S CANADIAN OPERATIONS**

21. The PRACS Institute's Canadian operations were carried out by PRACS Canada, which operated out of the Greater Toronto Area.

22. I am advised by Gries that PRACS Canada operated out of five premises:

- (a) 4520 Dixie Road: PRACS Canada leases a clinic located at 4520 Dixie Road, Mississauga, Ontario. This facility contains three independent study units with approximately 75 beds in total;
- (b) 4500 Dixie Road: PRACS Canada also leases a facility located at 4500 Dixie Road, Mississauga, Ontario;
- (c) 4540 Dixie Road: PRACS Canada leases an administrative center located at 4540 Dixie Road, Mississauga, Ontario;
- (d) 1310 Fewster Road: The recruiting/call center operated by PRACS Canada is located at 1310 Fewster Road in Toronto, Ontario. This facility hosts the local human resources department, as well as the offices used for the recruitment of participants for clinical studies; and
- (e) 1290 Ellesmere Road: This facility consists of a bioanalytical laboratory located at 1290 Ellesmere Road, in Toronto, Ontario. This laboratory is specialized in data management operations (collectively the "**Ontario Premises**").

23. I am advised by Gries that rent under the leases for the Ontario Premises is paid on the first of the month in advance. The leases were in good standing as of February 28, 2013. No rent payments have been made for March. To the best of my knowledge no action has been taken by the landlords against PRACS Canada.

**E. EVENTS LEADING TO RECEIVERSHIP**

24. I have been advised by Gries that:

- (a) PRACS Canada has no funds with which to operate its business and the Lenders are not prepared to provide any additional funding;
- (b) PRACS Canada has no alternative sources of financing and it has ceased operations;
- (c) the directors of PRACS Canada intend to resign on March 22, 2013; and
- (d) all PRACS Canada's employees have been terminated as of March 20, 2013.

25. I have been advised by Gries, that PRACS Canada consents to the appointment of the Receiver and PwC has consented to such appointment.

26. In my view, the appointment of a receiver provides a stable, transparent court supervised process to attempt to maximize value for stakeholders, which may include exploring going concern solutions with a purchaser that may be willing to restart some or all of the operations of PRACS Canada. Given the lack of funding the Agent anticipating an expedited process will be required. The Agent is concerned that any delay in appointing a receiver will make this difficult.

27. I have been advised by Deborah Williams, a partner at Cox Smith, local U.S. counsel for the Lenders, that PRACS Institute's Board of Directors authorized a filing in the US under Chapter 7 of the United States Bankruptcy Code and that this filing is to occur on March 22, 2013.

28. I swear this affidavit in support of the application to appoint PricewaterhouseCoopers as receiver of PRACS Canada and for no other purpose.

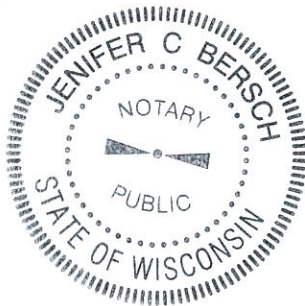
SWORN BEFORE ME at the City of  
St. Francis, in the State of Wisconsin  
March 22, 2013.

Jenifer C. Bersch

A Notary Public in and for the State of  
Wisconsin

Anthony Marino

ANTHONY MARINO



FREEPORT FINANCIAL LLC  
Applicant and  
PRACS INSTITUTE CANADA B.C. LTD.  
Respondent

Court File No:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF ANTHONY MARINO  
(SWORN MARCH 22, 2013)**

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON, M5J 2T3

Brett Harrison LS#: 44336A  
Tel: 416-865-7932  
Fax: 416-865-7048  
email: Brett.Harrison@McMillan.ca

Lawyers for the Applicant

**TAB C**

This is Exhibit "C" referred to in  
the Affidavit of DONALD T. BOBBS,  
sworn before me this 28<sup>TH</sup> day  
of May, 2013.

A handwritten signature in blue ink, reading "Jennifer C. Beusch", is written over a horizontal line.

Notary Public

## SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of June 20, 2012, between PRACS INSTITUTE CANADA B.C. LTD., a British Columbia corporation ("Grantor") and FREEPORT FINANCIAL LLC, a Delaware limited liability company, in its capacity as Agent ("Agent") for the benefit of Agent and Canadian Term Lenders (collectively, "Beneficiaries").

### WITNESSETH:

WHEREAS, pursuant to that certain Credit Agreement dated as of the date hereof by and among PRACS Institute Holdings, LLC, a Delaware limited liability company ("US Borrower"), Grantor (and together with US Borrower, the "Borrowers"), the other Persons that are designated as "Loan Parties", Agent, and the financial institutions and other Persons from time to time party thereto as Lenders (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement"), US Lenders have agreed to make certain US Loans to US Borrower and incur Letter of Credit Obligations on behalf of US Borrower and to hold certain obligations assumed or incurred by US Borrower that constitute certain US Loans, and Canadian Term Lenders have agreed to hold certain obligations assumed or incurred by Grantor that constitute Canadian Term Loan C;

WHEREAS, in order to induce Agent and Canadian Term Lenders to enter into the Credit Agreement and the other Loan Documents and to induce Canadian Term Lenders to hold Canadian Term Loan C provided for in the Credit Agreement, Grantor has agreed to grant a continuing Security Interest (as hereinafter defined) on the Collateral (as hereinafter defined) to secure Grantor's Obligations.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. DEFINED TERMS.

(a) The terms "Account", "Chattel Paper", "Document of Title", "Goods", "Instrument", "Intangible", "Inventory", "Investment Property", "Money", "Proceeds", "Security", "financing statement" and "financing change statement" whenever used herein shall be interpreted in accordance with their respective meanings in the PPSA. The term "Proceeds", whenever used herein and interpreted as above, shall, by way of example, include trade-ins, equipment, Money, bank accounts, notes, Chattel Paper, Goods, contract rights, Accounts and any other personal property or obligation received when such Collateral or Proceeds are sold, exchanged, collected or otherwise disposed of or dealt with.

(b) Unless otherwise defined or stated, the following terms have the following meanings:

(i) "Collateral" has the meaning given to it in Section 2(a).

(ii) "Contracts" means all contracts, undertakings, or agreements (other than rights evidenced by chattel paper, securities or Instruments) in or under which Grantor



may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account.

(iii) “Credit Agreement” has the meaning given to it in the first recital hereof.

(iv) “PPSA” means the *Personal Property Security Act* (Ontario), including the regulations thereto, provided that, to the extent that perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security as in effect in a jurisdiction of Canada other than Ontario, “PPSA” means the *Personal Property Security Act* or such other applicable legislation as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

(v) “Receiver” has the meaning given to it in Section 7.

(vi) “Security Agreement” means this agreement and all schedules and exhibits attached hereto as the same may be amended, restated, supplemented and otherwise modified from time to time.

(vii) “Security Interest” has the meaning given to it in Section 2(a).

(c) All other capitalized terms used but not otherwise defined herein have the meanings given to them in the Credit Agreement.

## 2. GRANT OF SECURITY INTEREST.

(a) To secure the prompt and complete payment, performance, and observance of all of its Obligations, Grantor hereby irrevocably mortgages, charges, assigns, transfers, delivers, hypothecates and pledges to Agent, for the benefit of Beneficiaries, and hereby irrevocably grants to Agent, for the benefit of Beneficiaries, a security interest (such mortgage, charge, assignment, transfer, delivery, hypothecation, pledge and security interest, collectively, the “Security Interest”) in all of its right, title and interest in, to, and under all Grantor’s present and after-acquired personal property and other assets, including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of Grantor:

(i) all Accounts, claims, choses in action and demands of every nature and kind howsoever arising or secured, including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by Grantor;

(ii) all Chattel Paper and Documents of Title (whether negotiable or not);

(iii) all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto);

(iv) all Inventory;

(v) all Equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures, motor vehicles and other vehicles of whatsoever nature or kind;

(vi) all Instruments;

(vii) all Money and Securities;

(viii) all present and future Contracts, contract rights and insurance claims;

(ix) all Intellectual Property;

(x) all Intangibles;

(xi) all Investment Property;

(xii) all deeds, documents, writings, papers, books of account and other books relating to or being records of any of the foregoing or by which such are or may hereafter be secured, evidenced, acknowledged or made payable; and

(xiii) all Proceeds and renewals thereof, accretions thereto and substitutions therefor.

The foregoing property is collectively referred to as the “Collateral”; provided, however, that notwithstanding any of the other provisions set forth in this Section 2, this Security Agreement shall not constitute a grant of a security interest in any property to the extent that such grant of a security interest is (x) prohibited by any requirements of any law, rule or regulation of a Governmental Authority or requires a consent not obtained of any Governmental Authority pursuant to such requirement or (y) prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property; provided, further, that the exclusions set forth in clauses (x) and (y) above shall not apply to Accounts or to any other category of Collateral to the extent such requirements of law, rule or regulation or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law.

(b) Notwithstanding Section 2(a), Grantor’s grant of security in “trade- marks” (as defined in the *Trade-marks Act* (Canada)) under this Security Agreement shall be limited to a grant by Grantor of a security interest in all of Grantor’s right, title and interest in such trade-marks.

(c) The Security Interest granted hereby shall not extend or apply to, and Collateral shall not include, the last day of the term of any lease or agreement therefor, but upon the enforcement of the Security Interest, Grantor, as applicable, shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

(d) In addition, to secure the prompt and complete payment, performance and observance of its Obligations and in order to induce Canadian Lenders as aforesaid, Grantor hereby grants to Agent, for the benefit of Beneficiaries, a right of setoff against its property held by Agent or any other Beneficiary, consisting of property described above in Section 2(a) now or hereafter in the possession or custody of or in transit to Agent or any other Beneficiary, for any purpose, including safekeeping, collection or pledge, for the account of Grantor, or as to which Grantor may have any right or power.

**3. AGENT'S AND OTHER BENEFICIARIES' RIGHTS; LIMITATIONS ON AGENT'S AND OTHER BENEFICIARIES' OBLIGATIONS.**

(a) It is expressly agreed by Grantor that, anything herein to the contrary notwithstanding, Grantor shall remain liable under each of its Contracts and each of its Licenses to observe and perform all of the conditions and obligations to be observed and performed by it thereunder. Neither Agent nor any other Beneficiary shall have any obligation or liability under any Contract or License by reason of or arising out of this Security Agreement or the granting herein of a Security Interest thereon or the receipt by Agent or any other Beneficiary of any payment relating to any Contract or License pursuant hereto. Neither Agent nor any other Beneficiary shall be required or obligated in any manner to perform or fulfill any of the obligations of Grantor under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Agent may at any time after an Event of Default has occurred and is continuing without prior notice to Grantor, notify Account Debtors and other Persons obligated on the Collateral that Agent has a security interest therein, and that payments shall be made directly to Agent. Upon the request of Agent, following the occurrence and during the continuation of an Event of Default, Grantor shall so notify its Account Debtors and other Persons obligated on Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on the Collateral, the affected Grantor shall not give any contrary instructions to such Account Debtor or other Person without Agent's prior written consent.

(c) So long as an Event of Default has occurred and is continuing, Agent may at any time in Agent's own name, in the name of a nominee of Agent or in the name of Grantor communicate (by mail, telephone, facsimile or otherwise) with Account Debtors, parties to Contracts, and obligors in respect of Instruments and/or Chattel Paper to verify with such Persons, to Agent's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, and/or Chattel Paper. So long as an Event of Default has occurred and is continuing, Grantor, at its own expense, shall cause the independent chartered accountants then engaged by Grantor to prepare and deliver to Agent and each other Beneficiary at any time and from time to time promptly upon Agent's request the following reports with respect to Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as Agent may request. Grantor, at its own expense, shall deliver to Agent the results of each physical verification, if any, which Grantor may in its

discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

4. REPRESENTATIONS AND WARRANTIES. Grantor represents and warrants that as of the Closing Date:

(a) Grantor has rights in and the corporate power to transfer each item of its Collateral upon which it purports to grant a Security Interest hereunder free and clear of any and all Liens other than Permitted Encumbrances.

(b) No effective security agreement, financing statement or equivalent security or Lien instrument covering all or any part of its Collateral is on file or of record in any public recording or registration office, except such as may have been filed (i) by Grantor or Agent in favor of Agent pursuant to this Security Agreement or the other Loan Documents, or (ii) in connection with any other Permitted Encumbrances.

(c) This Security Agreement is effective to create a valid and continuing Security Interest in favour of Agent, for the benefit of Beneficiaries, on the Collateral of Grantor, and such Security Interest has been perfected to the extent that a Security Interest may be perfected by filing financing statements pursuant to the PPSA, which financing statements are set out in Schedule I. The Security Interest is prior to all other Liens, except Permitted Encumbrances that would be prior to the Security Interest in favor of Agent for the benefit of Beneficiaries solely by operation of law (in contrast with Liens granted by Grantor in respect of which a public registration or filing is made), and is enforceable as such against any and all creditors of and purchasers from Grantor (other than purchasers and lessees of Inventory in the ordinary course of business), except as enforcement may be limited by bankruptcy, insolvency, or similar laws relating to the enforcement of creditors' rights generally and by equitable principles. All action by Grantor necessary or desirable to protect and perfect the Security Interest on each item of its Collateral has been duly taken.

(d) Schedule II hereto lists all Instruments and Chattel Paper of Grantor. All action by Grantor necessary to protect and perfect the Security Interest of Agent on each item set forth on Schedule II (including the delivery of all originals thereof to Agent and the legending of all Chattel Paper and Instruments as required by Section 5(b) hereof) has been duly taken. The Security Interest of Agent, for the benefit of Beneficiaries, on the Collateral of Grantor listed on Schedule II hereto is prior to all other Liens, except Permitted Encumbrances that would be prior to the Security Interest in favor of Agent solely by operation of law (in contrast with Liens granted by Grantor in respect of which a public registration or filing is made), and is enforceable as such against any and all creditors of and purchasers from Grantor, except as enforcement may be limited by bankruptcy, insolvency or similar laws relating to the enforcement of creditors' rights generally and by equitable principles.

(e) Grantor's correct incorporated name is set forth on Schedule III and there is no French language version of its incorporated name. Grantor's jurisdiction of incorporation, chief executive office, principal place of business, registered office according to its constating documents, corporate offices, all warehouses and premises where Grantor's Collateral is stored

or located, and the locations of its books and records concerning such Collateral are set forth on Schedule III hereto.

(f) With respect to any and all Accounts now owned or hereafter acquired by Grantor, (i) they represent *bona fide* rendering of services to Account Debtors in the ordinary course of Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper; (ii) other than in the ordinary course of business, to Grantor's knowledge, there are no setoffs, claims or disputes existing or asserted with respect thereto and Grantor has made no agreement with any Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom; (iii) other than in the ordinary course of business, to Grantor's knowledge, there are no facts, events or occurrences which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on Grantor's books and records and any invoices, statements or other information delivered to Agent and other Beneficiaries with respect thereto; and (iv) Grantor has received no written notice of proceedings or actions which are threatened or pending against any Account Debtor which would reasonably be expected to result in any material adverse change in such Account Debtor's financial condition or otherwise that any Account Debtor is unable generally to pay its accounts as they become due.

(g) Grantor has no interest in, or title to, any owned federally registered Patent, Trademark, Design or Copyright subject to a registration or application for a registration, except as set forth in Schedule IV hereto. This Agreement is effective to create a valid and continuing Lien in favour of Agent, for the benefit of Beneficiaries, on Grantor's Patents, Trademarks, Designs and Copyrights and, upon the filing of the financing statements referred to in Section 4(c), and the recording of this Security Agreement in the Canadian Intellectual Property Office, all actions necessary or desirable to perfect or protect Agent's and other Beneficiaries' interests on Grantor's Patents, Trademarks, Designs and Copyrights will have been duly taken.

5. COVENANTS. Grantor covenants and agrees with Agent, for the benefit of Beneficiaries, that from and after the date of this Security Agreement and until the Termination Date:

(a) Further Assurances; Pledge of Instruments; Chattel Paper.

(i) At any time and from time to time, upon the reasonable written request of Agent and at the sole expense of Grantor, Grantor shall promptly and duly execute and deliver any and all such further instruments and documents (including titles of indebtedness, pledges thereof, and deeds of hypothec with respect to Collateral located in the Province of Quebec) and take such further actions as Agent may deem reasonably necessary to obtain the full benefits of this Security Agreement and of the rights and powers herein granted, including (A) using its commercially reasonable efforts to secure all consents and approvals necessary for the assignment to or for the benefit of Agent of any License or Contract held by Grantor and to enforce the Security Interest granted hereunder and thereunder; and (B) filing any financing or financing change statements under applicable law with respect to the Liens granted hereunder or under any other Loan Document to which Grantor is a party.

(ii) Unless Agent shall otherwise consent in writing (which consent may be revoked), Grantor shall deliver to Agent all Collateral consisting of negotiable Documents of Title, certificated Securities, Chattel Paper and Instruments (in each case, accompanied by share transfer powers, allonges or other instruments of transfer executed in blank and directors' or shareholder resolutions) promptly after Grantor receives the same.

(iii) In accordance with the Credit Agreement, Grantor shall obtain a Control Agreement with each bank or financial institution holding a Deposit Account (other than payroll and petty cash accounts) for Grantor (it being understood that Agent shall not exercise any rights under such agreements with respect to Grantor's Collateral unless an Event of Default shall have occurred and be continuing).

(iv) If Grantor is or becomes the beneficiary of a letter of credit, Grantor shall promptly, and in any event within five (5) Business Days after becoming a beneficiary, notify Agent thereof and, if requested by Agent, use commercially reasonable efforts to enter into a tri-party agreement with Agent and the issuer and/or confirmation bank with respect to letter-of-credit rights assigning such letter-of-credit rights to Agent and directing all payments thereunder to the accounts subject to a tri-party pledged account agreement in favour of Agent, all in form and substance reasonably satisfactory to Agent.

(v) Grantor hereby authorizes Agent, for the benefit of Beneficiaries, to file at any appropriate filing or registration office any such financing statements or financing change statements (or applicable similar instruments) without the signature of Grantor to the extent permitted by applicable law, and to do such acts, matters and things (including completing and adding schedules hereto identifying Collateral of Grantor or any Permitted Encumbrances affecting such Collateral or identifying the locations at which Grantor's business is carried on and its Collateral and records relating thereto are situate) as Agent may reasonably deem appropriate to perfect on an ongoing basis and continue the Security Interest, to protect and preserve Collateral of Grantor and, following an Event of Default that has occurred and is continuing, to realize upon the Security Interest.

(b) Maintenance of Records. Grantor shall keep and maintain in all material respects, at its own cost and expense, satisfactory and complete records of Grantor's Collateral, including a record of any and all payments received and any and all credits granted with respect to the such Collateral and all other dealings with such Collateral. If Grantor retains possession of any Chattel Paper or Instruments with Agent's consent, such Chattel Paper and Instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of Freeport Financial LLC, as Agent, for the benefit of Beneficiaries."

(c) Covenants Regarding Intellectual Property Collateral.

(i) Grantor shall provide a report to Agent each calendar quarter in which it notifies Agent if it knows that any application or registration relating to any material registered Patent, Trademark, Design or Copyright (now or hereafter existing) it owns is reasonably expected to become abandoned or dedicated to the public domain, or of any

material adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the Canadian Intellectual Property Office, the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding Grantor's ownership of any such Patent, Trademark, Design or Copyright, its right to register the same, or to keep and maintain the same, other than registrations and applications abandoned in the ordinary course of business.

(ii) Grantor shall provide a report to Agent each calendar quarter in which it notifies Agent if either itself or through any agent, employee, licensee or designee, filed an application for the registration of any material Patent, Trademark, Design or Copyright with the Canadian Intellectual Property Office, the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency, and, upon request of Agent, Grantor shall execute and deliver any and all intellectual property security agreements as Agent may reasonably request to evidence Agent's Lien on such Patent, Trademark, Design or Copyright, and the Intangibles of Grantor relating thereto or represented thereby.

(iii) Grantor shall take all actions necessary or reasonably requested by Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of Grantor's material Patents, Trademarks, Designs and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless Grantor shall determine that such Patent, Trademark, Design or Copyright is not material to the conduct of its business.

(iv) In the event that Grantor becomes aware that any of its material Patent, Trademark, Design or Copyright Collateral is infringed upon in any material respect, or misappropriated or diluted by a third party, Grantor shall notify Agent promptly and, in any event, within ten (10) Business Days after Grantor so becomes aware. Grantor shall, unless it shall reasonably determine that such Patent, Trademark, Design or Copyright is material to the conduct of its business or operations, after having exhausted negotiations or other attempts to resolve the dispute, take commercially reasonable actions to abate (including, if appropriate, to sue in respect of) such infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as Agent shall deem necessary under the circumstances to protect such Patent, Trademark, Design or Copyright.

(d) Indemnification. In any suit, proceeding or action brought by Agent or any other Beneficiary relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, Grantor will save, indemnify and keep Agent and other Beneficiaries harmless from and against all expense (including reasonable legal fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or its successors from Grantor, except in the case of Agent or any other Beneficiary, to the extent such expense, loss, or damage is attributable to the gross negligence or wilful misconduct of Agent or

such other Beneficiary as determined by a court of competent jurisdiction. All such obligations of Grantor shall be and remain enforceable against and only against Grantor and shall not be enforceable against Agent or any other Beneficiary.

(e) Compliance with Terms of Accounts, etc. In all material respects, Grantor will perform and comply with all obligations in respect of its Collateral and all other agreements to which it is a party or by which it is bound relating to its Collateral.

(f) Limitation on Liens on Collateral. Grantor will not create, permit or suffer to exist, and Grantor will take commercially reasonable efforts to defend its Collateral against, and take such other action as is necessary to remove, any Lien on its Collateral except Permitted Encumbrances, and will use commercially reasonable efforts to defend the rights of Agent and other Beneficiaries in and to any of Grantor's rights under its Collateral against the claims and demands of all Persons whomsoever.

(g) Limitations on Disposition. Grantor will not sell, license, lease, transfer or otherwise dispose of any of its Collateral, or attempt or contract to do so except as permitted by the Credit Agreement.

(h) Further Identification of Collateral. Grantor will, if so requested by Agent, furnish to Agent, not more than quarterly, statements and schedules further identifying and describing Grantor's Collateral and such other reports in connection with such Collateral as Agent may reasonably request, all in such detail as Agent may reasonably specify.

(i) Notices. Grantor will advise Agent promptly, in reasonable detail, (i) of any Lien (other than Permitted Encumbrances) or claim made or asserted against any of its Collateral that would reasonably be expected to have a Material Adverse Effect, and (ii) of the occurrence of any other event which would have a Material Adverse Effect on the aggregate value of its Collateral or on the Liens created hereunder or under any other Loan Document.

(j) Certificates of Status. If requested by Agent, Grantor shall provide to Agent a certificate of status from its jurisdiction of incorporation not more frequently than once during each fiscal year.

(k) No Reincorporation. Grantor shall provide Agent with at least thirty (30) days prior written notice of any change in the information contained in Schedule III to keep Schedule III up to date and accurate. Without limiting the prohibitions on amalgamations and mergers involving Grantor contained in the Credit Agreement, except for amalgamations and mergers expressly permitted by the Credit Agreement, Grantor shall not continue, reincorporate, or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the date hereof without the prior written consent of Agent (which consent shall not be unreasonably withheld so long as Agent has been given sufficient time and opportunity to file financing statement(s) in the jurisdiction of continuance, reincorporation, or reorganization).

(l) Terminations; Amendments Not Authorized. Grantor acknowledges that it is not authorized to file any financing change statement with respect to any financing statement that has



been filed in respect of any Collateral Document to which it is a party without the prior written consent of Agent.

(m) Release of Grantor. This Security Agreement and all obligations of Grantor hereunder and all security interests granted hereby shall be released and terminated upon the Termination Date. Upon such release and termination, all rights in and to the Collateral of Grantor shall automatically revert to Grantor, and Agent and other Beneficiaries shall return any Collateral of Grantor in their possession to Grantor or to the Person or Persons legally entitled thereto, and shall endorse, execute, deliver, record and file all instruments and documents, and do all other acts and things, reasonably required for the return of such Collateral to Grantor or to the Person or Persons legally entitled thereto, and to evidence or document the release of the ratable benefit of Agent and other Beneficiaries arising under this Security Agreement, all as reasonably requested by Grantor.

6. AGENT'S APPOINTMENT AS ATTORNEY-IN-FACT.

(i) On the Closing Date, Grantor shall execute and deliver to Agent a power of attorney (the "Power of Attorney") substantially in the form attached hereto as Exhibit A. The power of attorney granted pursuant to the Power of Attorney is a power coupled with an interest and shall be irrevocable until the Termination Date. The powers conferred on Agent, for the benefit of Beneficiaries, under the Power of Attorney are solely to protect Agent's interests (for the benefit of Beneficiaries) in the Collateral and shall not impose any duty upon Agent or any other Beneficiary to exercise any such powers.

(ii) Agent agrees that (a) except for the powers granted in clause "(h)" of the Power of Attorney, it shall not exercise any power or authority granted under the Power of Attorney unless an Event of Default has occurred and is continuing, and (b) Agent shall account for any moneys received by Agent in respect of any disposition of Collateral pursuant to the Power of Attorney; provided that neither Agent nor any other Beneficiary shall have any duty as to any Collateral except as provided herein with respect to Collateral in its possession or under its control, and Agent and other Beneficiaries shall be accountable only for amounts they actually receive as a result of the exercise of such powers.

(iii) **NONE OF AGENT OR OTHER BENEFICIARIES OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO GRANTOR FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE TO THEIR OWN GROSS NEGLIGENCE OR WILFUL MISCONDUCT AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.**

7. REMEDIES; RIGHTS UPON DEFAULT.

(a) If any Event of Default shall have occurred and be continuing, Agent may appoint or reappoint by instrument in writing, any Person or Persons, whether or not an officer or officers or an employee or employees of Agent, to be an interim receiver, receiver or receivers (hereinafter called a “Receiver”, which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her/its stead. Any such Receiver shall, so far as concerns responsibility for his/her/its acts, be deemed the agent of the applicable Grantor and not of Agent or any other Beneficiary, and neither Agent nor any other Beneficiary shall be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver or his/her/its servants, agents or employees. Subject to the provisions of the instrument appointing him/her/it, any such Receiver shall have power to take possession of Collateral of the applicable Grantor, to preserve Collateral of the applicable Grantor or its value, to carry on or consent to the carrying on of all or any part of the business of Grantor and to sell, lease, license or otherwise dispose of or consent to the sale, lease, license, or other disposition of such Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the applicable Grantor, and without charge, enter upon, use and occupy all premises owned or occupied by Grantor wherein its Collateral may be situate, maintain such Collateral upon such premises, borrow money on a secured or unsecured basis and use such Collateral directly in carrying on Grantor’s business or as security for loans or advances to enable the Receiver to carry on Grantor’s business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Agent, all Money received from time to time by such Receiver in carrying out his/her/its appointment shall be received in trust for and be paid over to Agent. Every such Receiver may, in the discretion of Agent, be vested with all or any of the rights and powers of Agent. The identity of Receiver, its replacement and its remuneration shall be within the sole and unfettered discretion of Agent.

(b) If any Event of Default shall have occurred and be continuing, Agent may, either directly or through its agents or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of Section 7(a). In addition to all other rights and remedies granted to it under this Security Agreement, the Credit Agreement, the other Loan Documents and under any other instrument or agreement securing, evidencing or relating to any of Grantor’s Obligations (but subject to the terms of such instruments of agreements), if any Event of Default shall have occurred and be continuing, Agent may exercise all rights and remedies of a secured party under the PPSA.

(c) If any Event of Default shall have occurred and be continuing, Grantor agrees, at the request of Agent or any Receiver appointed by Agent, to assemble its Collateral and make it available to Agent or such Receiver at a place or places designated by Agent or such Receiver which are reasonably convenient to Agent or such Receiver and Grantor, whether at Grantor’s premises or elsewhere. Agent will give Grantor such notice, if any, as may be required by the PPSA of the date, time and place of any public sale or of the time after which a private sale of Collateral is to be made. Agent shall apply the net proceeds of any collection, recovery, receipt, appropriation, realization or sale on, from, or of Collateral to Grantor’s Obligations as provided in the Credit Agreement, and only after so paying over such net proceeds and payment by Agent of any other amount required by any provision of law need Agent account for the surplus, if any,

to Grantor. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of its Collateral are insufficient to pay all of Grantor's Obligations, including any legal, consultant, and Receiver fees and other expenses incurred by Agent or any other Beneficiary to collect such deficiency.

(d) Except as otherwise specifically provided herein, Grantor hereby waives presentment, demand, protest, or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any of its Collateral (including, without limitation, any Instrument constituting its Collateral at any time held by Agent on which Grantor is in any way liable), each to the extent permitted by applicable law.

(e) To the extent that applicable law imposes duties on Agent to exercise remedies in a commercially reasonable manner, Grantor acknowledges and agrees that it is not commercially unreasonable for Agent so long as an Event of Default shall have occurred and be continuing (i) to fail to incur expenses reasonably deemed significant by Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Agent against risks of loss, collection or disposition of Collateral or to provide to Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Grantor acknowledges that the purpose of this Section 7(e) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in Agent's exercise of remedies against the Collateral and that other actions or omissions by Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7(e). Without limitation upon the foregoing, nothing contained in this Section 7(e) shall be construed to grant any rights to Grantor or to impose any duties on Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7(e).

(f) Neither Agent nor any other Beneficiary shall be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, Grantor, any other obligor,

guarantor, pledgor or any other Person with respect to the payment of the Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof. Neither Agent nor any other Beneficiary shall be required to marshal the Collateral or any guarantee of the Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and their rights hereunder or under any other Loan Document shall be cumulative. To the extent it may lawfully do so, Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against Agent or any other Beneficiary, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral of Grantor made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise.

(g) Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with Grantor, debtors of Grantor, any other Loan Party, sureties and others and with Collateral and other security as Agent may see fit without prejudice to the liability of Grantor or Agent's right to hold and realize the Security Interest. Furthermore, without limiting any other provision hereof, after and during the continuance of an Event of Default, Agent may demand, collect and sue on Collateral in either Grantor's or Agent's name, at Agent's option, and may endorse Grantor's name on any and all cheques, commercial paper, and any other Instruments pertaining to or constituting Collateral. Nothing herein contained shall in any way obligate Agent to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute the Obligations.

(h) Each of Agent, other Beneficiaries, and any Receiver appointed by Agent shall use reasonable care with respect to the Collateral in its possession or under its control. Beyond the safe custody thereof, neither Agent nor any other Beneficiary or any Receiver appointed by Agent shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of Agent or such other Beneficiary or such Receiver, or any income thereon or as to the preservation of rights against third parties or any other rights pertaining thereto. To the maximum extent permitted by applicable law, Grantor waives all claims, damages, and demands against Agent or any other Beneficiary or any Receiver appointed by Agent arising out of the repossession, retention or sale of the Collateral except to the extent that such claims, damages, and demands arise out of the gross negligence or willful misconduct of Agent or any other Beneficiary or Receiver as determined by a court of competent jurisdiction.

(i) If any Event of Default shall have occurred and be continuing, Agent may require Grantor to engage a consultant or consultants of Agent's choice, or engage a consultant or consultants on behalf of Agent. Such consultants shall receive the full co-operation and support of Grantor and its officers and employees, including unrestricted access to the premises and books and records of Grantor. All reasonable fees and expenses of any such consultant shall be for the account of Grantor and shall be reimbursed or paid by Grantor upon request from Agent. Grantor hereby authorizes any such consultant to report directly to Agent and other Beneficiaries and to disclose to Agent and other Beneficiaries any and all information obtained by such consultant.

(j) Grantor agrees to be liable for and to pay all costs, charges and expenses reasonably incurred by Agent, any other Beneficiary or any Receiver appointed by Agent, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating Grantor's accounts, in preparing or enforcing this Security Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by Agent, any other Beneficiary or any Receiver appointed by Agent, as permitted hereby, shall be secured hereby.

8. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY-COLLATERAL. Solely for the purpose of enabling Agent to exercise rights and remedies under Section 7 hereof (including, without limiting the terms of Section 7 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as Agent shall be lawfully entitled to exercise such rights and remedies, Grantor hereby grants to Agent, for the benefit of Beneficiaries, an irrevocable, terminable (pursuant to Section 15 hereof) nonexclusive, non-transferable, non-sublicensable license to use solely during the continuance of an Event of Default, any Intellectual Property now owned or hereafter acquired by Grantor wherever such Intellectual Property may be located (exercisable without payment or royalty or other compensation to Grantor, but subject to any and all obligations to pay royalties or other compensation to any third parties under any relevant license or other agreement with any third parties with respect to any such Intellectual Property), except to the extent the foregoing license granted by Grantor to Agent, or the use of any such Intellectual Property by Agent or for the benefit of Beneficiaries, is prohibited by, or constitutes a breach or default under, or results in the termination of, or requires any consent not obtained under, any contract, license, agreement, instrument or other document related to such Intellectual Property.

9. LIMITATION ON AGENT'S AND CANADIAN TERM LENDERS' DUTY IN RESPECT OF COLLATERAL. Agent and other Beneficiaries shall use reasonable care with respect to the Collateral in its possession or under its control. Neither Agent nor any other Beneficiary shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of Agent or any other Beneficiary, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

10. REINSTATEMENT. This Security Agreement shall remain in full force and effect and continue to be effective should any petition or application be filed by or against Grantor for liquidation or reorganization, should Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver, interim receiver, receiver and manager, or trustee be appointed for all or any significant part of Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the applicable Grantor's Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the applicable Grantor's Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the

applicable Grantor's Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

11. NOTICES. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Security Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be addressed to the party to be notified as follows:

(a) If to Agent:

Freeport Financial LLC  
500 West Madison Street, Suite 2700  
Chicago, Illinois 60661  
ATTN: PRACS Institute - Account Officer  
Fax: (312) 281-4646

With a copy to:  
Latham & Watkins LLP  
233 South Wacker Drive  
Suite 5800  
Chicago, Illinois 60606  
ATTN: Jeff Moran, Peter Knight  
Fax: (312) 993-9767

(b) If to Grantor:

PRACS Institute Canada B.C. Ltd.  
4801 Amber Valley Parkway,  
Fargo, North Dakota 58104  
ATTN: Chief Financial Officer  
Fax: (701) 239-4955

(c) If to any Beneficiary (other than Agent), at the address of such Beneficiary specified in the Credit Agreement or any Assignment Agreement, or, in each case, at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been validly served, given or delivered (i) upon the earlier of actual receipt and five (5) Business Days after the same shall have been deposited with Canada Post (if originating in Canada) or the United States mail (if originating in the United States), registered or certified mail, as applicable, return receipt requested, with proper postage prepaid, (ii) upon transmission, when sent by telecopy or other similar facsimile transmission (with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or Canada Post (if originating in Canada) or the United States mail (if originating in the United States), as otherwise

provided in this Section 11, (iii) one (1) Business Day after deposit with a reputable overnight carrier with all charges prepaid, or (iv) when delivered, if hand-delivered by messenger.

12. SEVERABILITY. Whenever possible, each provision of this Security Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. This Security Agreement is to be read, construed and applied together with the Credit Agreement and the other Loan Documents which, taken together, set forth the complete understanding and agreement of Agent, other Beneficiaries and Grantor with respect to the matters referred to herein and therein.

13. NO WAIVER; CUMULATIVE REMEDIES. Neither Agent nor any other Beneficiary shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by Agent and then only to the extent therein set forth. A waiver by Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Agent would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of Agent or any other Beneficiary, any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. Save for any schedules which may be added hereto pursuant to the provisions hereof, none of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Agent and Grantor.

14. LIMITATION BY LAW. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

15. TERMINATION OF TILLS SECURITY AGREEMENT. Subject to Section 10 hereof, this Security Agreement shall terminate upon the Termination Date.

16. SUCCESSORS AND ASSIGNS. This Security Agreement and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor (including any debtor-in-possession on behalf of Grantor) and shall, together with the rights and remedies of Agent hereunder, for the benefit Beneficiaries, inure to the benefit of Agent and other Beneficiaries, all future holders of any instrument evidencing any of the Canadian Obligations and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Canadian Obligations or any portion thereof or interest therein shall in any manner impair the

Security Interest granted to Agent hereunder, for the benefit of Beneficiaries. No Grantor may assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

17. COUNTERPARTS. This Security Agreement may be executed in any number of separate counterparts, and such counterparts shall collectively constitute one agreement. This Security Agreement may be authenticated by manual signature, facsimile or, if approved in writing by Agent, electronic means, all of which shall be equally valid.

18. GOVERNING LAW.

(a) THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT PROVINCE AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN IN EFFECT FROM TIME TO TIME WITHOUT PREJUDICE TO OR LIMITATION OR ANY OTHER RIGHTS OR REMEDIES AVAILABLE UNDER THE LAWS OF ANY JURISDICTION WHERE PROPERTY OR ASSETS OF GRANTOR MAY BE FOUND.

(b) GRANTOR HEREBY CONSENTS AND AGREES THAT THE COURTS OF THE PROVINCE OF ONTARIO SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN GRANTOR, AGENT, AND ANY OTHER BENEFICIARY PERTAINING TO THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT. NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOUR OF AGENT. GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND GRANTOR HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL (RETURN RECEIPT REQUESTED) ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH IN SECTION 11 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF GRANTOR'S ACTUAL RECEIPT THEREOF OR FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED.

19. WAIVER OF JURY TRIAL. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY



AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE PROVINCIAL AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT DISPUTES ARISING HEREUNDER OR RELATING HERETO BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG AGENT, ANY OTHER BENEFICIARIES, AND ANY GRANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED IN CONNECTION WITH, THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO.

20. SECTION TITLES. The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

21. NO STRICT CONSTRUCTION. The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

22. ADVICE OF COUNSEL. Each of the parties represents to each other party hereto that it has discussed this Security Agreement and, specifically, the provisions of Section 18 and Section 19, with its counsel.

23. BENEFIT OF BENEFICIARIES. All Liens granted or contemplated hereby shall be for the benefit of Agent, individually, and the other Beneficiaries, and all proceeds or payments realized from Collateral of Grantor in accordance herewith shall be applied to Grantor's Obligations in accordance with the terms of the Credit Agreement.

24. WAIVER. To the extent permitted by applicable law, Grantor waives Grantor's right to receive a copy of any financing statement or financing change statement registered by Agent, or of any verification statement with respect to any financing statement or financing change statement registered by Agent.

25. COPY OF SECURITY AGREEMENT. Grantor hereby acknowledges receipt of a copy of this Security Agreement.

26. ATTACHMENT. Grantor and Agent hereby acknowledge that (1) value has been given (2) Grantor has rights in the Collateral and, to the extent that Grantor does not acquire rights or interests in any of the Collateral until after the execution and delivery of this Security Agreement, the Security Interest created hereby shall attach to such Collateral at the time Grantor acquires rights or interests therein and (3) this Security Agreement constitutes a "security agreement" as that term is defined in the PPSA.

27. AMALGAMATION. Grantor acknowledges and agrees that, in the event it amalgamates with any other company or companies, it is the intention of the parties hereto that the term “Grantor”, when used herein, shall apply to each of the amalgamating companies and to the amalgamated company, such that the Security Interest granted hereby:

(a) shall extend to “Collateral” (as that term is herein defined) owned by each of the amalgamating companies and the amalgamated company at the time of amalgamation and to any “Collateral” thereafter owned or acquired by the amalgamated company, and

(b) shall secure all “Obligations” of each of the amalgamating companies and the amalgamated company to Agent and other Beneficiaries at the time of amalgamation and all “Obligations” of the amalgamated company to Agent and other Beneficiaries thereafter arising. The Security Interest shall attach to all “Collateral” owned by each company amalgamating with Grantor, and by the amalgamated company, at the time of the amalgamation, and shall attach to all “Collateral” thereafter owned or acquired by the amalgamated company when such becomes owned or is acquired.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

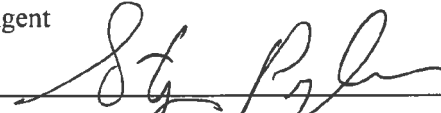
**PRACS INSTITUTE CANADA B.C. LTD.**

By: 

Name: Mark Ubert

Title: Chief Financial Officer

**FREEPORT FINANCIAL LLC,**  
as Agent

By: 

Name: STEPHEN PAPALAS

Title: AUTHORIZED SIGNATORY

## EXHIBIT A

### POWER OF ATTORNEY

This Power of Attorney is executed and delivered by **PRACS INSTITUTE CANADA B.C. LTD.**, a British Columbia corporation (“Grantor”) to Freeport Financial LLC (together with its successors and assigns, hereinafter referred to as “Attorney”), as Agent for itself and the benefit of Beneficiaries, under (i) a Credit Agreement between, *inter alia*, CRSI Holdings, LLC, a Delaware limited liability company, Grantor and Attorney and (ii) a Security Agreement between, *inter alia*, Grantor and Attorney (“Security Agreement”), both dated as of the date hereof, and other related documents (the “Loan Documents”). No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek continuation from Grantor as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and Grantor irrevocable waives any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this Power of Attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by Grantor without Attorney’s written consent. Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Security Agreement.

Grantor hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), with full power of substitution, as Grantor’s true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or in its own name, from time to time in Attorney’s discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary to accomplish the purposes of the Loan Documents and, without limiting the generality of the foregoing, Grantor hereby grants to Attorney the power and right, on behalf of Grantor, without notice to or assent by Grantor, and subject to the terms of the Security Agreement at any time, to do the following: (a) change the mailing address of Grantor, open a post office box on behalf of Grantor, open mail for Grantor, and ask, demand, collect, give acquittances and receipts for, take possession of, endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in connection with any property of Grantor; (b) effect any repairs to any asset of Grantor, or continue to obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against Grantor or its property; (d) defend any suit, action or proceeding brought against Grantor if Grantor does not defend such suit, action or proceeding or if Attorney reasonably believes that Grantor is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem reasonably appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due to Grantor

whenever payable and to enforce any other right in respect of Grantor's property; (f) cause the chartered accountants then engaged by Grantor to prepare and deliver to Attorney at any time and from time to time, promptly upon Attorney's request, the following reports: (1) a reconciliation of all accounts; (2) an aging of all accounts, (3) trial balances, (4) test verifications of such accounts as Attorney may request, and (5) the results of each physical verification of inventory if any; (g) communicate in its own name with any party to any Contract with regard to the assignment of the right, title and interest of Grantor in and under the Contracts and other matters relating thereto; (h) to file such financing statements with respect to the Security Agreement, with or without Grantor's signature, or to file a photocopy of the Security Agreement in substitution for a financing statement, as the Agent may deem appropriate and to execute in Grantor's name such financing statements and financing change statements which may require Grantor's signature; and (i) execute, in connection with any sale provided for in any Loan Document, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral and to otherwise direct such sale or resale, all as though Attorney were the absolute owner of the property of Grantor for all purposes, and to do, at Attorney's option and Grantor's expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve, or realize upon Grantor's property or assets and Attorney's Liens thereon, all as fully and effectively as Grantor might do. Grantor hereby ratifies, to the extent permitted by law, all that said Attorney shall lawfully do or cause to be done by virtue hereof.

THIS POWER OF ATTORNEY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ONTARIO APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT PROVINCE.

IN WITNESS WHEREOF, this Power of Attorney is executed by Grantor pursuant to the authority of its board of directors this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**PRACS INSTITUTE CANADA B.C. LTD.,**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## SCHEDULE I

### FINANCING STATEMENTS

Jurisdiction	Secured Party	Debtor	Reference File No. & Registration No.	Expiry
Ontario	Freeport Financial LLC	PRACS Institute Canada B.C. Ltd.	679072698 - 20120611 1028 1590 2369	June 11, 2017
British Columbia	Freeport Financial LLC	PRACS Institute Canada B.C. Ltd.	787729G	June 11, 2017

**SCHEDULE II**  
**INSTRUMENTS AND CHATTEL PAPER**

None.



### SCHEDULE III

#### NAME; JURISDICTION OF INCORPORATION; CHIEF EXECUTIVE OFFICE; PRINCIPAL PLACE OF BUSINESS; REGISTERED OFFICE AND CORPORATE OFFICES; LOCATIONS OF ASSETS

Incorporated Name	Jurisdiction of Incorporation	Chief Executive Office	Principal Place of Business	Registered Office	Corporate Offices	Locations of Assets	Locations of Books and Records
PRACS INSTITUTE CANADA B.C. LTD.	British Columbia	4801 Amber Valley Parkway, Fargo, ND 58104	1290 Ellesmere Rd., Toronto, Ontario M1P 2X9	1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, BC, V6E 4N7	<p>4801 Amber Valley Parkway, Fargo, ND 58104</p> <p>1290 Ellesmere Rd., Toronto, Ontario M1P 2X9</p> <p>4520 Dixie Rd., Mississauga, Ontario L4W 1N2</p> <p>4540 Dixie Rd., Unit C, Mississauga, Ontario L4W 1N2</p> <p>4500 Dixie Rd., Mississauga, Ontario L4W 1N2</p> <p>1310 Fewster Dr., Mississauga, Ontario L4W 1N2</p>	Ontario	<p>1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, BC, V6E 4N7</p> <p>4801 Amber Valley Parkway, Fargo, ND 58104</p> <p>1290 Ellesmere Rd., Toronto, Ontario M1P 2X9</p>

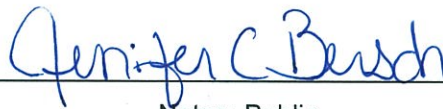
## **SCHEDULE IV**

### **PATENTS; TRADEMARKS; DESIGNS; COPYRIGHTS**

None.

**TAB D**

This is Exhibit "D" referred to in  
the Affidavit of DONALD T. BOBBS,  
sworn before me this 28<sup>TH</sup> day  
of May, 2013.

A handwritten signature in blue ink, reading "Jennifer C. Bensch", is written over a horizontal line.

Notary Public

# **PRACS Institute Canada B.C. LTD.**

## **FIRST REPORT OF THE RECEIVER**

**April 25, 2013**

Court File No. CV 13-10046-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990,  
c. C.43, AS AMENDED and SECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

**FIRST REPORT OF PRICEWATERHOUSECOOPERS INC.  
AS RECEIVER OF  
PRACS INSTITUTE CANADA B.C. LTD.**

**April 25, 2013**

**A. INTRODUCTION**

1. On March 22, 2013, (the **"Date of Appointment"**), pursuant to an application (the **"Application"**) by Freeport Financial LLC (**"Freeport"**) and an order (the **"Receivership Order"**) of the Ontario Superior Court of Justice (Commercial List) (the **"Court"**), PricewaterhouseCoopers Inc. (**"PwC"**) was appointed as receiver (the **"Receiver"**), without security, over all of the assets, undertakings and property (the **"Property"**) of PRACS Institute Canada B.C. LTD. (**"PRACS Canada"** or the **"Company"**), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*,

R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended. A copy of the Receivership Order is attached hereto as **Appendix “A”**.

2. This is the first report of the Receiver (the “**First Report**”), the purpose of which is to provide the Court with information with respect to:
  - a) the Receiver’s activities since the Date of Appointment to the date of this First Report;
  - b) notices (the “**Notice to Sponsors**”) provided to pharmaceutical and biotechnology companies (“**Sponsors**”) that have engaged PRACS Canada or its predecessor entities (either directly or through its affiliates) to conduct Clinical Trials (as defined herein) or Analyses (as defined herein),
  - c) the status of ongoing Clinical Trials being undertaken by PRACS Canada on behalf of Sponsors at the Date of Appointment;
  - d) the Receiver’s receipts and disbursements from the Date of Appointment to April 21, 2013;
  - e) the marketing and sale process (“**Sales Process**”) undertaken by the Receiver, to effect a sale of the Company’s right, title and interest in and to the Property;
  - f) the asset purchase agreement dated April 19, 2013 (the “**APA**”) entered into jointly by 2368350 Ontario Inc. (“**Inflamax**”), 1893929 Ontario Inc. (“**CML**”) and the Receiver with respect to the sale of the Clinic Assets (as defined herein) and the Laboratory Assets (as defined herein) and the proposed sale (“**Sale Transaction**”) of the Clinic Assets and the Laboratory Assets to Inflamax and CML, respectively; and
  - g) the protocol (“**Third-Party Property Protocol**”) regarding certain property in PRACS Canada’s possession or control (“**Third-Party Property**”) that is owned by or otherwise belongs to Sponsors or Clinical Trial subjects (“**Subjects**”) set out in Schedule “D” to the APA, which addresses the treatment,

storage, and/or return of the Third-Party Property;

and to seek an order (the “**Approval and Vesting Order**”) of this Court:

- a) approving the Sale Transaction, including the Third-Party Property Protocol set out in the Schedule “D” to the APA;
  - b) vesting the Company’s right, title and interest, if any, in and to the Clinic Assets in Inflamax free and clear of all encumbrances;
  - c) vesting the Company’s right, title and interest, if any, in and to the Laboratory Assets in CML free and clear of all encumbrances;
  - d) sealing the Bid Summary (as defined herein) as attached hereto as **Confidential Appendix “A”**;
  - e) sealing the unredacted APA containing the commercially sensitive terms of the APA, attached hereto as **Confidential Appendix “B”**; and
  - f) approving the activities of the Receiver as described in this First Report.
3. In preparing this First Report, the Receiver has relied upon certain unaudited financial information of the Company, the Company’s books and records, information obtained from former personnel of the Company and other sources (collectively, the “**Information**”).

In accordance with industry practice, except as described in this Report:

- a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
- b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook;



4. Unless otherwise noted, all currency amounts contained in this report are expressed in Canadian dollars. Capitalized terms not defined herein are defined in the Receivership Order or the APA, as applicable.

## B. BACKGROUND

5. PRACS Canada is a wholly owned subsidiary of PRACS Institute Holdings, LLC, a Delaware limited liability company (the “**Holding Company**”), which is the holding company for the PRACS Institute group of companies (collectively, the “**PRACS Group**”). The PRACS Group provided early phase clinical research services for the development of drugs and medical services and operated its business through entities controlled, directly or indirectly, by the Holding Company.
6. The PRACS Group formerly operated as the Cetero Group of companies (“**Cetero Group**”). The Cetero Group included Canadian entities Allied Research International Inc. (“**Allied**”) and BA Research Co. (“**BA Research**”), which conducted early phase clinical drug trials (“**Clinical Trials**”) and provided bioanalytical testing services (“**Analyses**”) for pharmaceutical and biotechnology companies in the Greater Toronto Area.
7. On March 26, 2012, the Cetero Group including Allied and BA Research filed voluntary petitions under Chapter 11 (the “**Chapter 11 Proceedings**”) of Title 11 of the United States Code 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware. Recognition proceedings under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 were initiated in the Court in March 2012.
8. The PRACS Group purchased substantially all of the assets of the Cetero Group pursuant to the Chapter 11 Proceedings in June 2012, with a predecessor of PRACS Canada purchasing the assets of Allied and BA Research.
9. In connection with the purchase of substantially all assets of the Cetero Group, the Holding Company, PRACS Canada and its direct and indirect subsidiaries entered into a credit agreement, dated June 20, 2012, as amended from time to time (the “**Credit Agreement**”), with various financial institutions (the “**Lenders**”) including Freeport

as agent and lead arranger.

10. PRACS Canada's obligations under the Credit Agreement are defined in the Credit Agreement as Canadian Term Loan C (the "**PRACS Canada Obligations**") and are secured by first registered liens and security interests granted pursuant to a general security agreement (the "**Security Agreement**") between Freeport and PRACS Canada. The PRACS Canada Obligations were approximately \$4.2 million in aggregate at the Date of Appointment.
11. A detailed description of the Company's business and operations is set out in the Affidavit of Anthony Marino, sworn March 22, 2013 (the "**Marino Affidavit**") in support of the Application. A copy of the Marino Affidavit can be found in the Application Record posted on the Receiver's website at [www.pwc.com/car-pracs](http://www.pwc.com/car-pracs) (the "**Website**").
12. The Marino Affidavit indicated that PRACS Canada had no funds with which to fund operations and the Lenders were not prepared to provide additional funding. Accordingly, on March 20, 2013, prior to the appointment of the Receiver, the Company terminated all 216 of its active full time and part-time employees (the "**Former Employees**"). In addition, the Receivership Order provided that to the extent any employees remained employees of PRACS Canada, their employment was terminated by the Receivership Order.
13. On March 22, 2013, the directors of PRACS Canada resigned and the Holding Company and its United States subsidiaries each filed voluntary petitions under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas (the "**Bankruptcy**"). Jose Rodrigues (the "**Chapter 7 Trustee**") was appointed as trustee in bankruptcy.
14. The resignation of PRACS Canada's directors and the Bankruptcy constituted events of default under the Credit Agreement.

#### C. RECEIVER'S ACTIVITIES SINCE THE DATE OF APPOINTMENT

## POSSESSION AND CONTROL

15. On the Date of Appointment, pursuant to the Receivership Order, the Receiver took steps to take possession and control of the Property situated at the Company's five leased locations including:
- a) the clinic located at 4520 Dixie Road, Mississauga Ontario;
  - b) the clinic located at 4500 Dixie Road, Mississauga Ontario;
  - c) an administrative office located at 4540 Dixie Road, Mississauga Ontario;
  - d) a recruiting center located at 1310 Fewster Drive, Mississauga Ontario (together with the three locations above, collectively, the "**Clinic Facilities**"); and
  - e) a bioanalytical laboratory located at 1290 Ellesmere Road, Toronto, Ontario (the "**Laboratory Facilities**")
- collectively (the "**Leased Premises**").

## CONTAINMENT AND STORAGE OF DRUGS

16. Pursuant to a license issued to BA Research (the "**Laboratory License**") and a license issued to PRACS Canada (the "**Clinic License**" and, together with the Laboratory License, the "**Controlled Substances Licenses**") by Health Canada, Office of Controlled Substances (the "**OCS**"), under the *Controlled Drugs and Substances Act* (S.C. 1996, c. 19), the Company was authorized to possess certain controlled drugs and substances ("**Controlled Substances**") at the Laboratory Facilities and the Clinic Facilities respectively. In addition, PRACS Canada held certain investigational medicinal products ("**IMPs**"), and other rescue drugs including both over-the-counter approved drugs and prescription drugs ("**Rescue Drugs**") at the Clinic Facilities. Collectively, the Controlled Substances, IMPs and Rescue Drugs are referred to herein as the "**Drugs**".
17. IMPs were used by the Company in carrying out clinical studies for Sponsors. The IMPs are stored in locked freezers and cabinets in the pharmacies at the Clinic Facilities, which utilize an alarm monitoring system for security purposes and to

monitor freezer temperatures. The pharmacies and freezer rooms at the Clinic Facilities are also monitored to ensure a controlled environment with respect to temperature and humidity.

18. PRACS Canada performed Analyses on certain laboratory samples ("**Samples**") from Clinical Trials or drug studies undertaken by Sponsors. These Samples were stored in locked freezers in a locked freezer room at the Laboratory Facilities. Freezer temperatures are monitored using an alarm system and an alarm monitoring company.
19. On the Date of Appointment, the Receiver took possession of the Property and changed all external locks and controlled access to the Leased Premises.
20. The Receiver notified the security and alarm monitoring companies monitoring the Laboratory Facilities and Clinic Facilities of its appointment and continued the monitoring activities with respect to the security alarms and freezer temperatures previously undertaken by PRACS Canada. The Receiver was added to the contact list to be notified by the alarm monitoring companies in the event of an alarm.
21. A representative of Health Canada attended at the Clinic Facilities concurrently with the Receiver taking possession of the Leased Premises and Property on March 22, 2013. At that time, the Receiver reviewed with Health Canada the safeguards and protocols that PRACS Canada had in place in respect of the possession and storage of the Drugs at both the Clinic Facilities and Laboratory Facilities. Based on its discussions with Health Canada, the Receiver understands that the Company's protocols were in compliance with the Controlled Substance Licenses and other regulatory requirements in respect of the storage and possession of Drugs. Where applicable, the Receiver has maintained the protocols established by the Company in respect of the storage of Drugs.

#### INSURANCE

22. The Receiver has reviewed the Company's general liability and property and casualty insurance coverage with Marsh Canada Limited, the Company's insurance broker, which policies are in force until June 19, 2013. The Receiver has been added as a loss

payee and named insured in respect of the Company's insurance policies, including all property and casualty insurance policies. The Receiver is not aware of any claims against the insurance policies at this time.

#### BANK ACCOUNTS

23. On March 25, 2013, the Receiver took steps to freeze the Company's bank accounts and requested remittance of the funds therein to the Receiver. As detailed in paragraph 86 of this First Report, as at April 21, 2013, the Receiver had recovered approximately \$154,000 from the Company's bank accounts.

#### INVENTORY COUNT

24. On March 25 and 26, 2013, the Receiver supervised certain Former Employees with whom it contracted to undertake a physical inventory count of the Company's principal assets located at the Leased Premises. The inventory count included laboratory and clinical equipment, furniture and technology related assets.
25. In order to preserve certain protocols used by the Company in the storage of the Drugs, the Receiver did not undertake an inventory count of Third-Party Property owned by or otherwise belonging to the Sponsors.

#### PROPERTY LEASES

26. The Receiver has provided Colliers International Inc. ("**Colliers**") and Reiter-Nemetz LLP ("**Reiter**"), agents to the landlord for the Clinic Facilities and the Laboratory Facilities (together the "**Agents**"), respectively, with a copy of the Receivership Order. The Receiver has also undertaken to pay occupation rent to the Agents, on behalf of the respective landlords, from the Date of Appointment until it no longer requires the Leased Premises, to the extent rent has not been prepaid by PRACS Canada.

#### BOOKS AND RECORDS

27. Since PRACS Canada commenced operations in June 2012 following the purchase of the assets of Allied and BA Research, the Receiver understands that audited financial statements have not been prepared.
28. The Receiver understands that certain financial and payroll functions were managed within the PRACS Group in the United States and the majority of the Company's books and records are kept and maintained there. The PRACS Group's employees in the

United States were terminated prior to the Bankruptcy. Accordingly, there is limited access to certain of the Company's books and records. The Receiver is working with the Chapter 7 Trustee and his advisors to obtain certain financial information as and when required.

#### EMPLOYEES

29. As discussed earlier in this First Report, the Lenders advised the Receiver that the Company had terminated all employees on March 20, 2013, prior to the Receiver's appointment. The Receivership Order does not authorize the Receiver to operate the Company's business.
30. The Receiver was advised that the Company did not provide Former Employees with Records of Employment ("**ROE**") upon their termination. Accordingly, subsequent to the Date of Appointment, the Receiver made arrangements for the preparation of ROEs for Former Employees. The ROEs were filed with Service Canada on behalf of the Former Employees.
31. As discussed earlier in this First Report, certain financial and administrative functions of PRACS Canada, including certain payroll functions, were centralized in the United States. The Receiver has contracted the former United States-based employee responsible for PRACS Canada's payroll to prepare T4s for the Former Employees of the Company in respect of wages received from PRACS Canada during the period January 1 to March 20, 2013.
32. According to PRACS Canada's books and records and discussions with former United States based employees (retained by the Chapter 7 Trustee) with access to the payroll records of Former Employees that are located at PRACS Canada's U.S affiliates, as of the Date of the Appointment, PRACS Canada owed outstanding salaries and hourly wages ("**Wages**") to Former Employees in the amount of approximately \$11,724 and owed outstanding vacation pay in the amount of approximately \$44,296. The outstanding Wages are the result of some of the Company's Former Employees not entering their time into the Company's time reporting system prior to the Company's final payroll for the week ended March 22, 2013.

33. The Receiver estimates the potential priority claim under section 81.4 of the BIA in respect of unpaid wages to be approximately \$28,741.
34. In addition to claims for unpaid wages, the Receiver estimates claims from Former Employees in respect of expenses incurred on behalf of the Company which have not been reimbursed to be approximately \$4,000. The majority of this amount is unsecured.

#### PENSION PLAN

35. PRACS Canada is the sponsor and administrator of a defined contribution pension plan - The Pension Plan for Employees of PRACS Institute Canada (the "**Plan**"), registered under the Financial Services Commission of Ontario ("**FSCO**") as registration number 1151976. Manulife Financial ("**Manulife**") is the third-party administrator of the Plan. Certain of PRACS Canada's Former Employees contributed to the Plan. The Plan provided for the Company to match contributions of employees at varying rates. On March 28, 2013, the Receiver provided notice of the receivership and a copy of the Receivership Order to Manulife.
36. The Receiver has been advised by a Former Employee responsible for Plan contributions that at the Date of Appointment there were no unpaid employer pension contributions under the Plan and all amounts withheld from employees' pay have also been remitted to the Plan. The Receiver will review the Company's available books and records to assess the information provided to it by the Former Employee.
37. Manulife has advised the Receiver that as a result of the receivership and PRACS Canada's inability to make monthly contributions as required under the Plan, it has taken steps to seek approval from FSCO to wind up the Plan.

#### HST

38. The Company has not yet filed its first HST return. Based on the Company's books and records for the period June 21, 2012 to March 22, 2013, the Receiver has determined that PRACS Canada has an outstanding liability in respect of HST in the amount of approximately \$70,000. This HST liability is subject to review and reassessment by the Canada Revenue Agency.



## POTENTIAL BANKRUPTCY

39. In its Application and the draft Order filed with the Court in respect of same, Freeport requested that the Court issue a receivership order which granted the Receiver the authority to assign PRACS Canada into bankruptcy.
40. The Application for the receivership was brought on notice only to the Company and the Receivership Order did not ultimately include this provision. However, Freeport has advised the Receiver that it intends to revisit the bankruptcy issue prior to the distribution of any proceeds of sale, on proper notice. Freeport has advised the Receiver that it reserves all rights and remedies available to it in this regard.

## STATUTORY DUTIES

41. On April 2, 2013, in accordance with subsection 245(1) of the BIA, the Receiver sent a notice of its appointment, in the prescribed form, and its first report pursuant to subsection 246(1) of the BIA, to known creditors as set out in the Company's books and records, and to the Superintendent of Bankruptcy.
42. The Receiver has completed its statutory obligations with respect to the Former Employees pursuant to, and as required by, the *Wage Earner Protection Program Act* (S.C. 2005, C. 47, s.1) according to information available to the Receiver from the Company's books and records. Former Employees have been mailed a copy of the materials filed with Service Canada and the appropriate form to complete their proof of claim.

## COMMUNICATIONS RELATED TO ONGOING CLINICAL TRIALS

43. As a provider of Clinical Trials and Analyses for Sponsors, PRACS Canada's involvement in Clinical Trials included testing IMPs on Subjects. Subjects were required to sign a patient Information and Consent Form ("**ICF**") prior to commencing any Clinical Trial, which ICF provides information regarding the purpose of the study, details of the study, side effects or other risks, possible benefits of the study, compensation for participation ("**Stipends**"), release of medical records and privacy issues, contact information for Sponsors and medical professionals, and how to withdraw from the study. The Clinical Trials are overseen by an ethics board and, where the Sponsor is not based in Canada, Health Canada requires the Sponsor to have



a Canadian representative. The studies are also overseen by a qualified investigator or study doctor (the “**Investigator**”).

44. The Clinical Trials conducted by PRACS Canada at the Clinic Facilities and the treatment, storage and/or return of certain Clinical Trial and Analyses documentation and records, IMPs, Samples, patient records and personal information and other Clinical Trial related materials are subject to certain regulatory requirements as set out by Health Canada, the United States Food and Drug Administration (“**FDA**”) and IRB Services (“**IRB**”), an independent company that reviews research involving humans and provides ethical oversight of the research or clinical studies under its purview.
45. On the Date of Appointment, a representative of Health Canada attended at the Clinic Facilities to assess the impact of the receivership on Clinical Trials being conducted by PRACS Canada and the impact, if any, on the Subjects that were participating in Clinical Trials.
46. The representative of Health Canada was provided with a copy of the Receivership Order and advised that pursuant thereto, the Receiver was not authorized to operate the Company, including the continuation of the Clinical Trials.
47. On the Date of Appointment, the Receiver was advised by PRACS Canada’s former clinical director, Alex Quitazol (“**Quitazol**”), of two Clinical Trials that remained ongoing:
  - a) a Clinical Trial (“**Ongoing Trial #1**”) undertaken on behalf of a Sponsor headquartered in the United Kingdom (“**Sponsor #1**”); and
  - b) a Clinical Trial (“**Ongoing Trial #2**”) undertaken on behalf of a Sponsor headquartered in the United States (“**Sponsor #2**”).
48. On March 23, 2013, the Receiver was made aware of a third ongoing Clinical Trial (“**Ongoing Trial #3**”), which PRACS Canada was contracted to undertake for a third Sponsor (“**Sponsor #3**”) in the United States. The Receiver was advised by Quitazol that Ongoing Trial #3 was a multi-center study with Subjects residing throughout the United States. The Receiver understands that none of the Subjects taking part in

Ongoing Trial #3 are located in Canada.

49. The Receiver was advised by both Quitazol and Sponsor #1 that Ongoing Trial #1 was in its final stages as Subjects had only one remaining clinical visit (their end of study safety visit).
50. Ongoing Trial #2 consisted of 60 Subjects (the "**Trial #2 Subjects**") who, as of the Date of Appointment, had completed two of the three dosing periods; the third dosing period was scheduled to commence on March 24, 2013.
51. Quitazol advised the Receiver that on March 21 and March 22, 2013, some of the Former Employees attempted to contact all of the Trial #2 Subjects to notify them of the receivership and that PRACS Canada had terminated operations, and to advise them not to commence the third dosing period. Quitazol could not confirm that all of the Trial #2 Subjects had in fact been reached.
52. The Receiver held discussions with Health Canada and its legal counsel in respect of its concerns for the safety of the Trial #2 Subjects who may not have been contacted by the Former Employees or notified of the receivership.
53. Accordingly, on March 26, 2013, the Receiver provided the following notices to parties with an interest in the status of the ongoing Clinical Trials:
  - a) the Receiver sent (by email and/or registered mail) a letter to the 131 Subjects participating in Ongoing Trial #1 and Ongoing Trial #2, notifying them of the appointment of the Receiver, providing them with a copy of the Receivership Order and advising them that PRACS Canada had terminated operations and was not continuing its role in any Clinical Trials. Subjects were instructed to contact IRB or the applicable Sponsor of their Clinical Trial in respect of any questions they may have. The Subjects were also advised to call 911 in case of a medical emergency or their regular medical provider in respect of other medical questions;
  - b) the Receiver sent (by email) to IRB, the relevant ethics board for Ongoing Trial #1 and Ongoing Trial #2, notice of the receivership (including a copy of the

Receivership Order) and informed IRB that PRACS Canada had terminated operations and was not continuing its role in any Clinical Trials. The Receiver also advised IRB that it would be notifying the Sponsors, Subjects and Health Canada of the receivership and the immediate consequences thereof;

- c) the Receiver sent (by email) to Sponsor #1, Sponsor #2 and Sponsor #3, notice of the receivership (including a copy of the Receivership Order) and notified them that PRACS Canada had terminated operations and was not continuing its role in any Clinical Trials;
  - d) the Receiver sent (by email) to Health Canada, notice of the receivership (including a copy of the Receivership Order) and informed them that PRACS Canada had terminated operations and was not continuing its role in any Clinical Trials. The Receiver also advised Health Canada that it has taken measures to safeguard the Drugs, Samples, and Clinical Trial and Laboratory records held on the Leased Premises;
  - e) the Receiver sent (by email) to the FDA, notice of the receivership (including a copy of the Receivership Order) and informed the FDA that PRACS Canada had terminated operations and was not continuing its role in any Clinical Trials. The Receiver also advised the FDA that it has taken measures to safeguard the Drugs, Samples and Clinical Trial and Laboratory records held on the Leases Premises; and
  - f) the Receiver sent (by email) to Dr. Khattak, the Investigator identified for Ongoing Trial #1 and Ongoing Trial #2, notice of the receivership (including a copy of the Receivership Order) and informed him that PRACS Canada had terminated operations and was not continuing its role in any Clinical Trials. The Receiver informed Dr. Khattak that it was notifying the Subjects that the Receiver was not continuing the Clinical Trials and would not be providing any medical advice to Subjects.
54. In addition to the ongoing Clinical Trials, the Receiver determined that PRACS Canada had partially completed Analyses on behalf of two additional Sponsors at the Date of

Appointment. On March 26, 2013, the Receiver emailed two Sponsors notice of the receivership (including a copy of the Receivership Order) and informed them that PRACS Canada had terminated operations and would not be completing or reporting on any Analyses.

#### COMMUNICATIONS IN RESPECT OF CONTROLLED SUBSTANCES

55. As discussed earlier in this First Report, all employees were terminated on March 20, 2013. The Receiver understands that pursuant to requirements under the Controlled Substance Licenses, on March 21, 2013, the qualified person in charge appointed under the Laboratory License ("**Laboratory QPIC**") provided notice to the OCS that he was no longer employed by the Company. On March 26, 2013, the Individual in-Charge Person ("**ICP**") appointed under the Laboratory License ("**Laboratory ICP**") also notified the OCS of the termination of PRACS Canada's employees and the receivership.
56. On March 23, 2013, the ICP for the Clinic Facilities notified the OCS that he was no longer employed by PRACS Canada.
57. On March 25, 2013, the Receiver advised the OCS of its appointment as Receiver over the Property of PRACS Canada and provided the OCS with a copy of the Receivership Order. The Receiver also advised the OCS that it had been advised by Former Employees that no Controlled Substances were being held at the Clinic Facilities. The Receiver understands that the OCS has taken steps to close the Clinic License.
58. Pursuant to a request from OCS, on April 2, 2013, the Receiver engaged the Laboratory ICP to provide an inventory list of the Controlled Substances held at the Laboratory Facilities. The OCS was advised that the inventory list provided was based on the Controlled Substances inventory records maintained by the Laboratory ICP. The Receiver did not have access to the Controlled Substances held at the Laboratory Facilities as pursuant to storage requirements under the *Controlled Drugs and Substances Act*, the Controlled Substances were stored in a safe, to which only the Laboratory QPIC (who had been terminated on March 20, 2013) had been provided with the combination to the lock.

59. On April 8, 2013, a representative of OCS ("**OCS Representative**") attended at the Laboratory Facilities in respect of the voluntary forfeiture of the Controlled Substances held there.
60. The Laboratory QPIC also attended at the Laboratory Facilities in order to provide the OCS Representative with access to the safe and the Controlled Substances. The Laboratory QPIC and the OCS Representative conducted an inventory count of the Controlled Substances on hand and the OCS Representative took possession of and removed the Controlled Substances from the Laboratory Facilities. The Receiver understands that the OCS has taken steps to close the Laboratory License.

#### **RETURN OF SPONSOR PROPERTY**

61. As discussed earlier in this First Report, at the Date of Appointment, there were two ongoing Clinical Trials at the Clinic Facilities. In addition, a third Clinical Trial was being conducted at various testing sites outside of Canada.
62. Ongoing work in respect of these Clinical Trials was halted on March 20, 2013 following the termination of the Former Employees.

#### **TRANSFER OF IMPs AND RETURN OF ELECTRONIC RECORDS OF SPONSOR**

##### **#1**

63. Ongoing Trial #1 is a "double-blind" study, meaning that neither the Subjects nor the persons administering the experiment know the clinical aspects of the experiment. This is done in order to guard against both experimenter bias and placebo effects. Pursuant to Ongoing Trial #1, Sponsor #1 was not provided with the names and contact information of the Subjects during the period of the study.
64. On March 25, 2013, the Receiver was contacted by the Deputy Chairman of Sponsor #1 who requested that the Receiver assist Sponsor #1 in: (a) transferring certain IMPs owned by Sponsor #1 (the "**Sponsor #1 IMPs**") located at the Clinic Facilities to Sponsor #1; and (b) obtaining certain electronic data related to Ongoing Trial #1 that was stored by OmniComm Systems, Inc. ("**OmniComm**"), an electronic database provider in the United States. Sponsor #1 also advised the Receiver that, in order to

- maintain the double-blind aspect of its study, Sponsor #1 engaged a third party (the “**Sponsor #1 Designee**”) to retrieve and store these documents and IMPs.
65. The Receiver’s legal counsel, Blake, Cassels & Graydon LLP (“**Blakes**”) reviewed the contract between PRACS Canada and Sponsor #1 in respect of Ongoing Trial #1 and determined that the contract provided that ownership of the Sponsor #1 IMPs remained with Sponsor #1. In addition, the Receiver verified with Health Canada that Sponsor #1 had obtained Health Canada’s approval for transferring the Sponsor #1 IMPs to the Sponsor #1 Designee.
  66. The Receiver was advised by Sponsor #1 that it would be responsible for transferring the IMPs to the Sponsor #1 Designee in accordance with all applicable laws and regulatory guidelines.
  67. On March 28, 2013, the Receiver met with the Sponsor #1 Designee and Quitazol to inventory the Sponsor #1 IMPs being removed from the Clinic Facilities. The Receiver obtained identification from the Sponsor #1 Designee and followed PRACS Canada’s protocol for taking an inventory and transferring the Sponsor #1 IMPs to the Sponsor #1 Designee.
  68. With respect to Sponsor #1’s request to access the electronic documents related to Ongoing Trial #1 held at OmniComm, the Receiver identified a number of issues to be addressed prior to deciding whether it could consent to such transfer. The issues considered and the Receiver’s current understanding of these issues are as follows:
    - a) Informed Consent Forms. Blakes reviewed the contract between PRACS Canada and Sponsor #1 in respect of Ongoing Trial #1 as well as the ICF in respect of Ongoing Trial #1. Based on discussions with the Quitazol and Sponsor #1, the Receiver understands that the electronic data stored at OmniComm does not contain personal identifying information. The Receiver understands that names of the Subjects in Ongoing Trial #1 are excluded from the electronic data stored at OmniComm and only the Subject’s initials and random ID study numbers are included. The Receiver and Blakes are of the view that the data does not include personal information and, accordingly, it may be transferred to Sponsor #1

without violating the ICF signed by the Subjects.

- b) Ownership of the Data. In reviewing the contract with Sponsor #1, Blakes determined that the contract provided that the data and records from Ongoing Trial #1 are the property of Sponsor #1. In addition, the Receiver understands that Health Canada regulations require Sponsors to maintain study records for a period of 25 years.
- c) The OmniComm contract. The electronic data in relation to Ongoing Trial #1 is stored at OmniComm pursuant to a contract with OmniComm and PRACS Institute, LLC, a related US-based entity that is in Bankruptcy. As such, the Receiver did not have the necessary authority to authorize and direct OmniComm to release the data to Sponsor #1. Accordingly, the Receiver requested the assistance of the Chapter 7 Trustee and its legal counsel to develop a protocol in order to deal with the consent requested by Sponsor #1, as well as other Sponsors who own such data that is in the possession of PRACS Canada or its affiliated entities in the United States.
- d) Outstanding Accounts Receivable. At the Date of Appointment, the Receiver asserted that certain amounts were owed by Sponsor #1 to PRACS Canada in respect of work completed under Ongoing Trial #1, even though the study had not been completed. The Receiver was able to reach an agreement (“**Settlement Agreement**”) with Sponsor #1 for the settlement of obligations between PRACS Canada and Sponsor #1 and the release of its electronic data by OmniComm. The Settlement Agreement has been executed, the Receiver has been paid in respect of its amounts owing to PRACS Canada and Sponsor #1 has been provided access to its electronic data.

#### **TRANSFER OF ONGOING TRIAL #2 SUBJECT DATA AND RETRIEVAL OF SPONSOR #2 IMPS**

- 69. Ongoing Trial #2 is also a “double-blind” study and, as such, Sponsor #2 is not permitted to know the names and contact information of the study participants during



the period of the study.

70. As discussed earlier in this First Report, on March 26, 2013, the Receiver provided a notice of the receivership to Sponsor #2 and informed Sponsor #2 that PRACS Canada would not be continuing its role in any Clinical Trials, including Ongoing Trial #2.
71. On April 2, 2013 (the “**Termination Date**”), the Receiver was advised by Sponsor #2 that Sponsor #2 had formally terminated Ongoing Trial #2 and had provided notice to Health Canada of this decision.
72. Pursuant to applicable Health Canada regulations, in order to terminate its Clinical Trial, Sponsor #2 was required to provide Health Canada with a plan, within 15 days of the Termination Date, as to how it intended to inform the Trial #2 Subjects of such termination, provide for end of study safety medical visits, deal with outstanding Stipends and notify the relevant ethics board.
73. On April 10, 2013, Sponsor #2 received approval from IRB to transfer Ongoing Trial #2 to a different contract research organization (“**CRO**”). Sponsor #2 has advised the Receiver that this other CRO (“**CRO #1**”) will complete the end of study safety visits for the Trial #2 Subjects and act as Sponsor #2’s agent in paying amounts owing to the Trial #2 Subjects in respect of their Stipends.
74. As a result of the “double-blind” nature of Ongoing Trial #2, neither Sponsor #2 nor IRB is in possession of contact information for the Trial #2 Subjects. Accordingly, Sponsor #2 requested the Receiver’s assistance in obtaining this information so that Trial #2 Subjects could be contacted to arrange end of study safety visits and the payments of Stipends.
75. The Receiver developed a communication plan to obtain consent from the Trial #2 Subjects to provide their contact information to the IRB, who would arrange to provide their contact information to CRO #1. The Receiver’s communication plan was approved by the IRB.
76. As at the date of this First Report, all Trial #2 Subjects had been contacted by the Receiver and have consented to the Receiver providing their contact information to



IRB. The Receiver confirms that it has provided the IRB with the contact information of the Trial #2 Subjects.

77. The Receiver has received a request from Sponsor #2 to remove the IMPs related to Ongoing Trial #2 ("**Sponsor #2 IMPs**") being held at the Clinic Facilities.
78. The Receiver verified with Health Canada that Sponsor #2 had obtained Health Canada's approval to remove the IMPs from the Clinic Facilities.
79. On April 24, 2013, the Receiver met with a representative from Sponsor #2, and the pharmacist formerly employed by PRACS Canada to take an inventory of and remove the Sponsor #2 IMPs from the Clinic Facilities.

#### **RETURN OF SPONSOR #3 FILES**

80. On March 25, 2013, the Receiver was contacted by the Associate General Counsel to Sponsor #3, who requested direction as to how Sponsor #3 could gain access to certain data ("**Trial Master Files**") related to Ongoing Trial #3 currently held at the Clinic Facilities.
81. The Receiver has determined that certain amounts are owed by Sponsor #3 to PRACS Canada in respect of work completed under Ongoing Trial #3. The Receiver and Sponsor #3 are engaged in discussions in respect of the payment of the outstanding accounts receivable and the retrieval of the Trial Master Files from the Clinic Facilities. Sponsor #3's Third-Party Property is expected to be removed from the Clinic Facilities prior to the closing of the Sale Transaction.

#### **REQUESTS FROM OTHER SPONSORS**

- 82.
83. The Receiver has been contacted by Lachlan Consultant Services, Inc. ("**Lachlan**"). Lachlan advised that it has been retained by a consortium ("**Consortium**") of Sponsors to assist in the identification and removal of Third-Party Property in PRACS Group locations in the US and Canada. The Receiver understands that a form of protocol is being discussed between the Consortium and the Chapter 7 Trustee. The Receiver intends to work cooperatively with the

## Chapter 7 Trustee and the Consortium.

84. The Receiver has received numerous additional requests from other Sponsors in respect to the return of Third-Party Property owned by such Sponsors and is addressing these requests on an individual basis.
85. As discussed in greater detail later in this report, the APA and draft court order have provided a protocol for the treatment and/or return of Third-Party Property in the Purchasers' possession following the closing of the Sale Transaction.

### WEBSITE AND HOTLINE

86. The Receiver established the Website to provide stakeholders with periodic updates and materials with respect to the receivership proceedings. All materials filed with the Court, including all orders granted by the Court, will be made available in electronic form. The Receiver has also established an information hotline for creditors at 416-815-5200.
87. Since the Date of Appointment, the Receiver has received and responded to enquiries received from Subjects, Former Employees, Health Canada, IRB, Sponsors, the Lenders and other creditors on a regular basis.

## D. RECEIVER'S RECEIPTS AND DISBURSEMENTS

88. The Receiver's statement of receipts and disbursements for the period March 22, 2013 to April 21, 2013 is summarized as follows:

Receiver's Statement of Receipts and Disbursements For the Period March 22, 2013 to April 21, 2013	
<b>RECEIPTS</b>	<b>\$</b>
Collections of Accounts Receivable	250,000
Cash on Hand	153,575
Other	693
<b>TOTAL RECEIPTS</b>	<b>404,268</b>
<b>DISBURSEMENTS</b>	
Rent	43,070
Post Appointment Contractor Fees	15,780
GST & HST (I.T.C.)	6,065
Security and Changing Locks	2,220
Other	365
<b>TOTAL DISBURSEMENTS</b>	<b>67,500</b>
<b>EXCESS OF RECEIPTS OVER DISBURSEMENTS</b>	<b>336,768</b>

89. Pursuant to paragraph 21 of the Receivership Order, the Receiver was authorized to borrow up to \$100,000, if required, of additional funding (the “**Receiver’s Borrowings**”) for the purpose of funding the exercise of its powers and duties conferred upon it under the terms of the Receivership Order. To date, the Receiver’s Borrowings have totaled nil.

## **E. SALES PROCESS**

### **SUMMARY OF MARKETING EFFORTS**

90. Paragraphs 3(j) and 3(k) of the Receivership Order provide that the Receiver is expressly empowered and authorized to market and sell PRACS Canada’s right, title and interest in and to the Property, subject to the limitations set forth therein.
91. As discussed earlier in this First Report, the Company and its U.S. affiliates ceased all operations and terminated the Former Employees on March 20, 2013. At the time, there was speculation that the U.S. affiliates would file voluntary bankruptcy petitions. Accordingly, immediately upon its appointment, the Receiver received calls from third parties interested in making an offer to purchase the Clinic Assets.
92. Due to (i) the nature of the Company’s business and assets; (ii) the limited financial resources available to the Receiver; and (iii) the need for potential purchasers to maintain Sponsor relations and potentially continue or complete ongoing Clinical Trials and Analyses quickly, the Receiver determined that, in order to maximize value and potentially preserve these ongoing Clinical Trials, a compressed and focused sales process would be the most beneficial way to proceed. Freeport supported this approach.
93. Accordingly, the Receiver prepared a notice of sale (“**Notice of Sale**”) to be distributed to parties identified by the Receiver and PricewaterhouseCoopers Corporate Finance Inc. (“**PwCCF**”) as potentially having an interest in the Property (“**Prospective Purchasers**”). A copy of the Notice of Sale is attached hereto as **Appendix “B”**.

94. On March 28, 2013, the Receiver distributed the Notice of Sale to 31 Prospective Purchasers for the Property. Prospective Purchasers contacted by the Receiver included, among others, CROs in Canada, the United States and Europe, in particular CROs performing allergy and asthma Clinical Trials and CROs that operated environmental exposure chambers, bioanalytical laboratories, private equity firms with investments in biotechnology and the pharmaceutical industry, and liquidators.
95. The Receiver was contacted directly by 17 additional Prospective Purchasers including a number of liquidators.
96. As of the date of this First Report, the Receiver has:
  - a) prepared and distributed (upon request) a confidentiality agreement ("**Confidentiality Agreement**") to 23 interested parties;
  - b) provided separate asset listings in respect of the assets owned by PRACS Canada and used in the operations of the Clinic Facilities ("**Clinic Assets**") and the assets owned by PRACS Canada and used in the operations of the Laboratory Facilities ("**Laboratory Assets**") to 19 Prospective Purchasers that had executed Confidentiality Agreements;
  - c) conducted 21 site tours with Prospective Purchasers, including 11 site tours of the Clinic Facilities and 10 site tours of the Laboratory Facilities;
  - d) responded to various requests for additional information in respect of the Clinic Assets and Laboratory Assets;
  - e) contracted with various Former Employees to assist in the site visits and other aspects of the Sales Process; and
  - f) provided a template asset purchase agreement and instructions ("**Bid Instructions**") setting out the terms and conditions for making an offer to purchase the Company's right, title and interest in and to the Property, to all parties expressing an interest therein (the "**Bidders**").
97. The Notice of Sale provided that interested parties would offer to purchase the

Company's right, title and interest in the Clinic Assets and/or the Company's right, title and interest in the Laboratory Assets.

98. The Notice of Sale provided that Bidders would use the template asset purchase agreement (which was provided by the Receiver) to make an offer to purchase the Clinic Assets and/or Laboratory Assets.
99. The deadline to submit offers in respect of the Clinic Assets and/or Laboratory Assets ("**Bids**") was initially established as April 8, 2013 at 10:00 a.m. Toronto time (the "**Initial Bid Deadline**").
100. The Bid Instructions also included the following terms and conditions:
  - a) Bidders were to provide a brief summary of the business conducted by the Bidder or its equity holders (if any acquisition vehicle was to be incorporated) or other relevant parties;
  - b) Bidders were to provide written confirmation that the Bids were not subject to a financing condition and that the Bidders had access to sufficient financial resources to consummate the transaction contemplated by the Bid;
  - c) Bids were to remain open and irrevocable by the Bidder, and capable of acceptance by the Receiver, until the earlier of: (i) April 19, 2013; (ii) the date on which the Receiver notified the applicable Bidder that its Bid is not accepted; or (iii) such later date as agreed to in writing by the Bidder;
  - d) Bids had to be accompanied by a cash deposit ("**Deposit**") equal to 15% of the total cash purchase price contemplated by such Bid;
  - e) the closing of the transaction contemplated by an APA accepted by the Receiver would be conditional upon the issuance of the Approval and Vesting Order; and
  - f) the Receiver reserved the right to have discussions and negotiations with Bidders, to clarify or revise certain terms of the Bids, which could lead to a further revised Bid.

101. On April 3, 2013, the Receiver sent a notice to all strategic purchasers and liquidators previously contacted by the Receiver pursuant to the Sales Process as well as other parties that had expressed an interest in the Property, extending the Initial Bid Deadline to April 10, 2013 at 12:00 p.m. Toronto ("**Extended Bid Deadline**"). The Initial Bid Deadline was extended in order to accommodate site tours and due diligence requests made by certain of the Prospective Purchasers.
102. The Receiver developed the Sales Process and Bid Instructions in consultation with Blakes and PwCCF. The Sales Process and Bid Instructions are broadly consistent with Bid Instructions that have been used in other insolvency proceedings.

#### THE BIDS

103. On or prior to the Extended Bid Deadline, a total of eight Bidders submitted Bids to purchase the Clinic Assets and/or Laboratory Assets. A ninth Bid was received after the Extended Bid Deadline and was rejected.
104. The Receiver prepared a summary of the key terms and conditions of each of the Bids (the "**Bid Summary**"). A copy of the Bid Summary accompanies the filing of this First Report as **Confidential Appendix "A"**.
105. On April 10, 2013, the Receiver and Blakes reviewed the Bids and determined that further clarification in respect of the treatment of Third-Party Property was required for certain Bids. On April 11, 2013, the Receiver held discussions with certain Bidders in this respect.
106. On April 12, 2013, the Receiver and Blakes reviewed the Bids with McMillan LLP, counsel to Freeport. The Receiver determined that the joint-bid from CML and Inflamax ("**Joint-Bid**") represented the highest and best offer for the Property, subject to certain modifications, primarily to clarify the treatment of Third-Party Property.
107. Following various discussions between the Receiver, CML, Inflamax and their respective legal counsel, on April 19, 2013, CML and Inflamax submitted a revised Joint-Bid in the form of the APA.

108. The Receiver accepted the APA on April 19, 2013, subject to, among other things, this Court's approval. A copy of the redacted APA, redacting the Purchase Price (as defined in the APA) and the amount of the Deposit, is attached hereto as **Appendix "C"**. A copy of the unredacted APA accompanies the filing of this First Report as **Confidential Appendix "B"**.
109. Pursuant to the Bid Instructions, Deposits received from unsuccessful Bidders were returned.
110. The Receiver respectfully submits that it has conducted the Sale Process in accordance with paragraph 3 (j) of the Receivership Order, that the Purchased Assets (as defined herein) were marketed and the Sales Process administered in a fair, transparent, necessarily expedient and commercially reasonable manner, consistent with the Receivership Order and the Notice of Sale.

#### THE APA

111. The key elements of the APA are as follows:
- a) the Purchased Assets consist of the Clinical Purchased Assets and the Laboratory Purchased Assets as defined in the APA;
  - b) on closing, the Receiver shall sell, assign and transfer the Clinical Purchased Assets to Inflamax;
  - c) on closing, the Receiver shall sell, assign and transfer the Laboratory Purchased Assets to CML;
  - d) the Receiver will assign to Inflamax or CML as applicable, the Company's rights, benefits and interests in, to and under the applicable Assigned Contracts (as defined in the APA);
  - e) each Purchaser acknowledges that it is purchasing the Purchased Assets, as defined in the APA, on an "as-is, where is" basis;
  - f) the APA provides for closing as soon as practicable following the issuance of the Approval and Vesting Order;

- g) the rights and obligations of Inflamax and CML are separate and not joint and several;
- h) the closing of the sale of the Clinical Purchased Assets to Inflamax is conditional on the closing of the sale of the Laboratory Purchased Assets to CML and *vice versa*. Any failure of Inflamax, CML or the Receiver to complete the respective closing of the sale of the Clinical Purchased Assets or Laboratory Purchased Assets will result in the termination of the APA;
- i) a Deposit was provided to the Receiver, to be held in trust and applied against the Purchase Price, as defined in the APA. The Deposit is forfeited by the Purchasers if the Sale Transaction does not close by the May 3, 2013 Termination Date solely as a result of a material breach by the Purchasers;
- j) the Purchase Price for the Property shall be allocated among the Clinical Purchased Assets and the Laboratory Purchased Assets by the Purchasers prior to the closing of the Sale Transaction;
- k) the Assumed Liabilities included obligations in respect to the Purchased Assets arising after the Closing Date (including in respect of any Assigned Contracts), Transfer Taxes and Cure Costs. All other liabilities are excluded including any liabilities related to the Plan;
- l) all Transfer Taxes (as defined in the APA) are payable on closing. Each applicable Purchaser may elect jointly with the Receiver under s. 167 of the *Excise Tax Act* to have the sale take place on a tax free basis. Notwithstanding this election, the applicable Purchaser will indemnify the Receiver in respect of any Transfer Taxes, penalties and interest which may be assessed against the Receiver in the event such election is challenged by the relevant tax authority;
- m) Excluded Assets under the APA include the following:
  - i) cash, accounts receivable, deposits, prepaids, book debts, refunds and other debts due or accruing due to the Company as at closing that



remain uncollected as of the closing, including any receivables, credits, surpluses, refunds related to taxes (including, without limitation, payroll taxes, HST, retail sales tax, corporate tax, and any other taxes), and employee plans and benefits; and

- ii) Third-Party Property in the Company's possession or control, except to the extent that the applicable Sponsor consents to the transfer of possession and control of such Third-Party Property to the Purchasers;
  - n) Certain schedules detailing Assigned Contracts and Excluded Assets may be updated prior to closing; and
  - o) The Purchasers confirm their intention to extend offers of employment to certain Former Employees.
112. The APA also includes the Third-Party Property Protocol in respect of the treatment of Third-Party Property in the Purchasers' possession or control from and after the closing of the Sale Transaction. Details of the Protocol, which are set out in Schedule "D" to the APA are summarized as follows:
- a) Third-Party Property owned by or otherwise belonging to a Sponsor shall remain property of such Sponsor and shall not constitute part of the Purchased Assets;
  - b) Inflamax shall store, maintain, protect, preserve and keep strictly confidential Third-Party Property located at the Clinic Facilities or otherwise in its possession or control and shall keep such property in its current state and condition;
  - c) CML shall store, maintain, protect, preserve and keep strictly confidential Third-Party Property located at the Laboratory Facilities or Third-Party Property otherwise in CML's possession or control and shall keep such property in its current state and condition;
  - d) CML or Inflamax, where applicable, shall contact each Sponsor within fifteen

(15) Business Days of the Closing Date to inform such Sponsor of any Third-Party Property in such Purchaser's possession or control that is owned by or otherwise belongs to the Sponsor; and

e) upon (i) agreement between the applicable Purchaser and the applicable Sponsor with respect to the options set out below; (ii) the applicable Purchaser's verification that the Third-Party Property at issue belongs to the applicable Sponsor; and (iii) the written consent of the Receiver, the Purchaser shall:

- i) store, maintain, protect and preserve such Third-Party Property in accordance with a new storage agreement between the Purchaser and the Sponsor;
- ii) allow the Sponsor reasonable access to the Clinic Facilities, the Laboratory Facilities or a third-party storage provider's facilities, as necessary, to remove the Sponsor's Third-Party Property;
- iii) package and ship such Third-Party Property in accordance with all applicable laws to the Sponsor at the Sponsor's sole cost and expense; or
- iv) dispose of any Third-Party Property belonging to a Sponsor that is capable of disposal in accordance with all applicable laws, at the applicable Purchaser's sole cost and expense,

provided, however, that if the Purchaser and Sponsor agree to options (ii) or (iii) above, prior to the transfer of any Third-Party Property, the Sponsor must provide written confirmation that the Sponsor has obtained all required regulatory approvals, if applicable, to transfer the Third-Party Property to the Sponsor or its designee (including from the applicable research ethics board and Health Canada) and represent and warrant that the Sponsor or its designee, as applicable, will collect, use, store, process and maintain all

Information (as defined in the APA) in compliance with all applicable privacy laws.

113. The Third-Party Property Protocol also provides for a release of the Receiver for any liability relating to the storage of the Third-Party Property from and after the Closing Date. It also provides that any party may seek advice and direction from the Court, including in respect of situations where agreement with respect to the release of Third-Party Property cannot be reached on a consensual basis.
114. A copy of the Third-Party Property Protocol was sent to all known Sponsors, which also provided them with the Receiver's contact information and notified them of the contemplated Sale Transaction and the return date of the notice of motion ("**Sale Approval Motion**") with respect to the Approval and Vesting Order. Sponsors were also notified that copies of the motion materials and First Report in respect of the Sale Approval Motion would be made available on the Receiver's Website. The form of notice sent to the Sponsors with respect to the Third-Party Property Protocol is attached hereto as **Appendix "D"**.

#### SUPPORT OF SALE

115. The Receiver is of the view that the Sale Transaction represents the highest and best realization available in respect of the Purchased Assets in the circumstances. The Lenders also support the Sale Transaction.
116. The Receiver is seeking the approval of the Sale Transaction and the APA. In the event the Court does not grant the Approval and Vesting Order or the Sale Transaction does not close, the Receiver is of the view that efforts to re-market the Property would be impaired if the Bid Summary or the commercially sensitive terms of the APA are made public at this time. Accordingly, the Receiver believes that it is appropriate for the Bid Summary and the unredacted APA to remain confidential until such time as the Sale Transaction closes. Accordingly, the Receiver requests an order sealing the unredacted APA and the Bid Summary.
117. In the Receiver's view, it is not feasible to identify and remove all Third-Party Property and resolve any and all issues related thereto between the Consortium,

other Sponsors, the Receiver and/or the Chapter 7 Trustee prior to the Closing Date. Accordingly, having an infrastructure in place to deal with the Third-Party Property from and after the Closing Date is critical. The Receiver believes that the Third-Party Property Protocol provides a structured and managed approach to the continued storage and treatment of the Third-Party Property, pending a consensual agreement between the applicable Purchaser and the applicable Sponsor (consented to by the Receiver) or further order of the Court. The Third-Party Protocol also establishes clear rules and procedures, which recognize the importance of confidentiality and the need to comply with regulatory standards that can be easily understood and followed by all relevant parties.

#### **F. CONCLUSION AND RECOMMENDATION**

118. The Receiver is of the view that the Sales Process was fair and transparent. Significant interest was expressed in the Property as evident from the number of Prospective Purchasers that investigated the opportunity to purchase the Property and the number of Bids received. To the best of its knowledge, all reasonable requests for information made to the Receiver by Prospective Purchasers were satisfied.
119. Despite the expedited time frame for the Sales Process, in the Receiver's view, the market for the Purchased Assets was sufficiently canvassed and parties who may have an interest were given a reasonable opportunity to review the Company's right, title and interest in and to the Property and make an offer. Further marketing efforts are unlikely to result in the identification of a superior transaction and any delay to attempt to do so would jeopardize the Sale Transaction. The Receiver does not believe that the outcome of the Sales Process would realistically be any different if an extended sales process were followed.
120. The Receiver respectfully submits to the Court that its activities in respect of the Sales Process were conducted in accordance with paragraph 3(j) of the Receivership Order.
121. It is the Receiver's view that the Sale Transaction provides an opportunity for the


Clinic Facilities and the Laboratory Facilities to resume and continue operations and maintains the prospect of future employment for certain of the Former Employees. As such, the Receiver recommends that the Court approve the Sale Transaction, as described herein.

122. The Receiver respectfully requests that the Court grant the Approval and Vesting Order:
- a) approving the Sale Transaction and the Third-Party Property Protocol;
  - b) vesting the Company's right, title and interest, if any, in and to the Purchased Clinical Assets in Inflammix, free and clear of all encumbrances,;
  - c) vesting the Company's right, title and interest, if any, in and to the Purchased Laboratory Assets in CML, free and clear of all encumbrances;
  - d) sealing the Bid Summary filed as **Confidential Appendix "A"** to the this First Report;
  - e) sealing the unredacted APA filed as **Confidential Appendix "B"** to this First Report; and
  - f) approving this First Report and activities of the Receiver as described in herein.

All of which is respectfully submitted on this 25<sup>th</sup> day of April, 2013.

**PricewaterhouseCoopers Inc.**

In its capacity as Court appointed Receiver of  
PRACS Institute Canada B.C. Ltd.

  
Michelle Pickett  
Senior Vice President

# **TAB E**

This is Exhibit "E" referred to in  
the Affidavit of DONALD T. BOBBS,  
sworn before me this 28<sup>TH</sup> day  
of May, 2013.

A handwritten signature in blue ink, reading "Jennifer C. Bensch", is written over a horizontal line.

Notary Public



Court File No. CV-13-10046-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 1<sup>st</sup>

JUSTICE MORAWETZ

)

DAY OF MAY, 2013

)

BETWEEN:

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43 and SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by PricewaterhouseCoopers Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and property of PRACS Institute Canada B.C. LTD. (the “**Debtor**”) for an order:

- (a) approving the transactions (collectively, the “**Sale Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between 2368350 Ontario Inc. (“**Inflamax**”) and CML HealthCare Bioanalytics Inc. f/k/a 1893929 Ontario Inc. (“**CML**” and, together with Inflamax, the “**Purchasers**”) and the Receiver dated April 19, 2013, an unredacted copy of which is attached as **Confidential Appendix “B”** to the First Report of the Receiver, dated April 25, 2013 (the “**Report**”);



- (b) vesting in Inflamax or its affiliates or subsidiaries designated prior to the closing of the Sale Transaction, all of the Debtor's right, title and interest in and to the Clinical Purchased Assets (as defined in the Sale Agreement);
- (c) vesting in CML or its affiliates or subsidiaries designated prior to the closing of the Sale Transaction, all of the Debtor's right, title and interest in and to the Laboratory Purchased Assets (as defined in the Sale Agreement) (the Clinical Purchased Assets and the Laboratory Purchased Assets, collectively, are the "**Purchased Assets**") and do not include any Excluded Asset (as defined in the Sale Agreement);
- (d) approving the Protocol Regarding Third-Party Property attached as **Schedule "D"** to the Sale Agreement (the "**Third-Party Property Protocol**");
- (e) sealing the confidential summary of bids received for the Purchased Assets and the unredacted Sale Agreement; and
- (f) approving the activities of the Receiver as described in the Report,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, *counsel for L. Perrigo, counsel for the Agent, counsel for Standard Life (Landlord), counsel for Apotex Inc.* and the Purchasers, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Natalina Arvaj sworn April 25, 2013, filed: *JR*

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Report is hereby abridged and the manner thereof validated so that this Motion is properly returnable today and hereby dispenses with any further or other service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Sale Transaction is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Sale Transaction and for the conveyance of the Purchased Assets to the Purchasers.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as **Schedule "A"** hereto (the

“**Receiver’s Certificate**”), the Clinical Purchased Assets as defined in the Sale Agreement shall vest absolutely in Inflamax and the Laboratory Purchased Assets as defined in the Sale Agreement shall vest absolutely in CML, in each case free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Wilton-Siegel, dated March 22, 2013; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**” and include any Encumbrance as defined in the Sale Agreement) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Debtor’s records pertaining to the Debtor’s past and current employees. The Purchasers and their affiliates and subsidiaries shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to them in a manner which is in all material respects identical to the prior use of such information by the Debtor.

6. **THIS COURT ORDERS** that, without limiting the generality of paragraph 2 hereof, the Third-Party Property Protocol set out as **Schedule “D”** to the Sale Agreement is hereby approved in its entirety.

7. **THIS COURT ORDERS** that, without limiting the generality of paragraph 2 hereof, Inflamax shall keep all Third-Party Property located at the Clinic Facilities (each as defined in the Sale Agreement) or otherwise within Inflamax’s possession or control from and after the

closing of the Sale Transaction, but which property is owned by or otherwise belongs to clinical trial subjects (each, a “**Subject**”) or pharmaceutical and biotechnology companies that have contracted with the Debtor to perform certain clinical trials or bioanalytical analyses (each, a “**Sponsor**”) strictly confidential, and shall treat such Third-Party Property in accordance with the Third-Party Property Protocol.

8. **THIS COURT ORDERS** that, without limiting the generality of paragraph 2 hereof, CML shall keep treat all Third-Party Property located at the Laboratory Facilities (as defined in the Sale Agreement) or otherwise within CML’s possession or control from and after the closing of the Sale Transaction, but which property is owned by or otherwise belongs to a Subject or a Sponsor strictly confidential, and shall treat such Third-Party Property in accordance with the Third-Party Property Protocol.

9. **THIS COURT ORDERS** that, without limiting the generality of paragraph 2 hereof, the Receiver be and is hereby released from any and all liability, obligations or responsibility that the Receiver has or may have with respect to any Third-Party Property from and after the closing of the Transaction.

10. **THIS COURT ORDERS** that any of the Receiver, either Purchaser or any Sponsor may seek the advice and direction of this Court with respect to the administration and carrying out of the Third-Party Property Protocol, including if the applicable Purchaser and Sponsor cannot reach an agreement on how to deal with such Sponsor’s Third-Party Property, with any motion to be brought on reasonable notice to all appropriate parties.

11. **THIS COURT ORDERS** that the summary of all bids received for the Purchased Assets, attached to the Report as **Confidential Appendix “A”** and the unredacted Sale Agreement, attached to the Report as **Confidential Appendix “B”** be and remain sealed as confidential pending completion of the Sale Transaction or further Order of this Court.

12. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchasers or their affiliates or subsidiaries pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. **THIS COURT ORDERS AND DECLARES** that each of Inflamax's purchase of the Clinical Purchased Assets and CML's purchase of the Laboratory Purchased Assets is exempt from the application of the *Bulk Sales Act* (Ontario).

14. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.

15. **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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

MAY 01 2013

NB

A handwritten signature in black ink, appearing to read "R. Brown", is written over a horizontal line.

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-13-10046-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c. C43 and SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (the “**Court**”) dated March 22, 2013, PricewaterhouseCoopers Inc. was appointed as the receiver (the “**Receiver**”), without security, of all of the assets, undertakings and property of PRACS Institute Canada B.C. LTD. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated May [ ], 2013 (the “**Approval Order**”), the Court approved the agreement of purchase and sale made as of April 19, 2013 (the “**Sale Agreement**”) between 2368350 Ontario Inc. (“**Inflamax**”) and CML HealthCare Bioanalytics Inc. f/k/a 1893929 Ontario Inc. (“**CML**” and, together with Inflamax, the “**Purchasers**”) and the Receiver, and provided for the vesting in Inflamax or its affiliates or subsidiaries the Clinical Purchased Assets<sup>1</sup> and vesting in CML or its affiliates or subsidiaries the Laboratory Purchased

---

<sup>1</sup> Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

Assets (together with the Clinical Purchased Assets, the “**Purchased Assets**”), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the satisfaction by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) that the Sale Transaction has been completed to the satisfaction of the Receiver.

**THE RECEIVER CERTIFIES** the following:

1. The Purchasers have satisfied the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the applicable Purchaser; and
3. The Sale Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [TIME] on \_\_\_\_\_ [DATE].

**PRICEWATERHOUSE COOPERS INC., in  
its capacity as Receiver of all of the assets,  
undertakings and property of PRACS  
Institute Canada B.C. LTD., and not in its  
personal or corporate capacity**

Per: \_\_\_\_\_

Name:

Title:

Court File No: CV-13-10046-00CL

## Respondents

Proceeding commenced at Toronto

## APPROVAL AND VESTING ORDER

Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

**Line Rogers** LSUC No.: 43562N  
Tel: (416) 863-4168  
Fax: (416) 863-2653  
Email: [line.rogers@blakes.com](mailto:line.rogers@blakes.com)

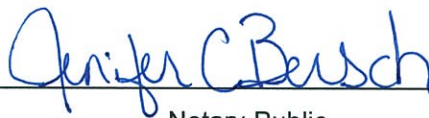
**Matthew Kanter** LSUC No.: 61250D  
Tel: (416) 863-3348  
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Lawyers for the Court-appointed Receiver of  
PRACS Institute Canada B.C. LTD.

**TAB F**



This is Exhibit "F" referred to in  
the Affidavit of DONALD T. BOBBS,  
sworn before me this 28<sup>TH</sup> day  
of May, 2013.

A handwritten signature in blue ink, reading "Jennifer C. Bensch", is written over a horizontal line.

Notary Public

**PricewaterhouseCoopers Inc.  
Court Appointed Receiver of  
PRACS Institute Canada B.C. Ltd.**

**STATEMENT OF RECEIPTS AND DISBURSEMENTS  
For the Period from March 22, 2013 to May 24, 2013**

<b>RECEIPTS</b>	<b>\$</b>
Sale of Clinical & Laboratory Assets	3,575,000.00
Pre-appointment Accounts Receivable collections	287,778.15
Cash on Hand	153,574.92
GST/HST Collected	139,527.21
Cost reimbursement re: Drug return	886.56
Courier Refund	672.14
Interest Income	514.76
<b>TOTAL RECEIPTS</b>	<b>4,157,953.74</b>
<b>DISBURSEMENTS</b>	
Receiver's Fees and Disbursements	344,837.53
Rent Expense	78,461.80
GST & HST (I.T.C.)	56,676.42
Post Appointment Contractor Fees	32,917.09
Utilities	8,709.30
Security and Lock	2,219.90
IT Service Fees	1,092.50
Repairs & Maintenance	720.90
Postage/Mail Redirection	280.00
Registration Fees	70.00
Bank Charges	45.00
<b>TOTAL DISBURSEMENTS</b>	<b>526,030.44</b>
<b>EXCESS OF RECEIPTS OVER DISBURSEMENTS</b>	<b>3,631,923.30</b>
<b>Priority Claims</b>	
Unpaid wages and expense (s 81 of BIA )	29,741.00
Unremitted source deductions	18,879.00
Deemed Trust Vacation Pay <sup>2</sup>	27,279.00
Deemed Trust Harmonized Sales Tax <sup>3</sup>	70,296.00
<b>Total Priority Claims</b>	<b>146,195.00</b>
<b>Accruals &amp; Provisions</b>	
Accrued Receiver Fees and Expenses <sup>4</sup>	154,644.62
Accrued Legal fees and Expenses <sup>5</sup>	157,374.07
Accrued HST liability (net of ITCs)	47,663.52
Provision for Operating Expenses and professional fees <sup>1</sup>	60,000.00
<b>Total Accruals</b>	<b>419,682.21</b>
<b>ESTIMATED FUNDS AVAILABLE FOR DISTRIBUTION AS AT MAY 24,2013</b>	<b>3,066,046.09</b>

**Notes**

1. The Statement of Receipts and Disbursements (R&D) does not include a provision for operating expenses and professional fees and expenses post May 24, 2013. In addition, the provision for operating expenses and professional fees included in the R&D above may not include all actual expenses incurred for the period ending May 24, 2013.
2. The deemed trust for vacation pay is pursuant to provincial legislation. This liability is unsecured in a bankruptcy.
3. The liability in respect of HST is unsecured in a bankruptcy.
4. The accrued Receiver fees and expenses include HST in the amount of approximately \$17,790.97.
5. The accrued Legal fees and expenses include HST in the amount of approximately \$17,396.30.
6. There are outstanding accounts receivables in the amount of approximately \$500,000. The Receiver is in discussions with sponsors in respect of this outstanding receivable, and expects to collect the majority of these accounts receivables.

FREEPORT FINANCIAL LLC  
Applicant

and

PRACS Institute Canada B.C. Ltd.  
Respondent

Court File No: CV-13-10046-00CL

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DONALD T. BOBBS**  
**(sworn May 28, 2013)**

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON, M5J 2T3

Brett Harrison LS#: 44336A  
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Lawyers for the Applicant

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C43 and SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

THE HONOURABLE ) MONDAY, THE 10<sup>th</sup>  
)  
) DAY OF JUNE, 2013

FREEPORT FINANCIAL LLC

Applicant

- and -

PRACS INSTITUTE CANADA B.C. LTD.

Respondent

**O R D E R  
(Lift Stay)**

**THIS MOTION**, made by the Applicant for an order:

- a) lifting the stay of proceedings against the Respondent granted by order of this Court dated March 22, 2013 (the “**Receivership Order**”) for the sole purpose of filing and serving an application for a bankruptcy order and dispensing with further notice of same; and
- b) abridging the time for service and validating the service of the Notice of Motion and the Motion Record so that this Motion is properly returnable June 10, 2013 and dispensing with further service thereof;

was heard this day, at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Don Bobbs sworn May 28, 2013, and on hearing submissions of counsel for the Applicant and counsel for PricewaterhouseCoopers Inc. in its capacity as receiver, without security, over all of the assets, undertakings and property of the Respondent;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and the manner of thereof validated so that this Motion is properly returnable today and hereby dispenses with any further or other service thereof.
  2. **THIS COURT ORDERS** that the stay of proceedings granted in the Receivership Order is hereby lifted for the sole purpose of and to the extent necessary for the Applicant to make an application for a bankruptcy order (the “**Application**”) against the Respondent.
  3. **THIS COURT ORDERS** that if the bankruptcy order is issued pursuant to the Application, the Receivership Order shall remain in full force and effect and such bankruptcy order shall be subject to the provisions of the Receivership Order.
-

APPLICANT FINANCIAL LLC  
Applicant

and

PRACS Institute Canada B.C. Ltd.  
Respondent

Court File No: CV-13-10046-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**  
**(Lift Stay)**

**McMILLAN LLP**  
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Lawyers for the Applicant

# TAB 4



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
PRACS INSTITUTE CANADA B.C. LTD. of the City of  
Toronto, in the Province of Ontario**

**BANKRUPTCY APPLICATION**

Freeport Financial LLC hereby makes an application to the Court that PRACS Institute Canada B.C. LTD. in the City of Toronto, Province of Ontario (**“PRACS Canada”**), be adjudged bankrupt and that a Bankruptcy Order be made in respect of its property, and says:

1. PRACS Canada, at some time during the six months next preceding the filing of this Bankruptcy Application carried on business in the City of Toronto, in the Province of Ontario, within the jurisdiction of this Court.
2. PRACS Canada is justly and truly indebted to certain financial institutions for which the Applicant acts as agent (the **“Lenders”**) in the sum of approximately \$4.4 million for monies borrowed.
3. The Lenders hold security for the payment of part of the said sum and estimate the value of such security at the sum of \$3.7 million. Accordingly, the Lenders are unsecured creditors of PRACS Canada in the approximate amount of at least \$680,000.

4. PRACS Canada, within the six months next preceding the date of the filing of this Bankruptcy Application, has ceased to meet its liabilities generally as they become due and has thus committed an act of bankruptcy.

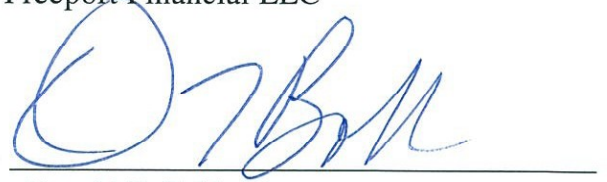
5. PricewaterhouseCoopers Inc. of the City of Toronto, is a company qualified to act as Trustee of the property of the said debtor, has agreed to act as such, and is acceptable to the Applicant.

DATED at the City of River Hills, in the State of Wisconsin this 28th day of May, 2013.

Signed by the Applicant  
in my presence.

  
\_\_\_\_\_  
Signature of Witness

Freeport Financial LLC

  
\_\_\_\_\_  
Donald T. Bobbs

I have authority to bind the corporation

ISSUED at the City of Toronto in the Province of Ontario, this                      day of May, 2013.

\_\_\_\_\_

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
PRACS INSTITUTE OF CANADA B.C. LTD. of the  
City of Toronto, in the Province of Ontario**

**AFFIDAVIT OF DONALD T. BOBBS  
(sworn May 28, 2013)**

I, Donald T. Bobbs, of the City of River Hills, Wisconsin, United States of America,  
MAKE OATH AND SAY:

1. I am the Senior Portfolio Manager, Credit, of Stark Investments, an affiliate of the Applicant, Freeport Financial LLC (**“Freeport”**), Agent for certain financial institutions (the **“Lenders”**) that have provided financing to PRACS Institute of Canada B.C. LTD. (**“PRACS Canada”**). As such I have personal knowledge of the facts deposed to herein except where I have relied on information from others in which case I have stated the source of my information and believe it to be true.

2. PRACS Canada, carrying on business in the City of Toronto, in the Province of Ontario, prior to the order of this Court on May 22, 2013 appointing PricewaterhouseCoopers Inc. as receivers, without security, over all of the assets, undertakings and property of PRACS Canada, is justly and truly indebted to the Lenders in the sum of approximately \$4.4 million as set out in the Bankruptcy Application. The amount of this indebtedness that is unsecured is at least approximately \$680,000.

3. The facts alleged in the Bankruptcy Application are within my own knowledge true.

SWORN BEFORE ME at the City of  
St. Francis, in the State of Wisconsin on  
May 28, 2013.



A Notary Public in and for the State of  
Wisconsin



Donald T. Bobbs

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**AFFIDAVIT OF DONALD T. BOBBS**  
**(sworn May 28, 2013)**

**McMILLAN LLP**  
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Lawyers for the Applicant

# TAB 6

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE

) MONDAY, THE ●<sup>th</sup>  
)  
) DAY OF JUNE, 2013

**IN THE MATTER OF THE BANKRUPTCY OF PRACS  
INSTITUTE OF CANADA B.C. LTD. of the City of Toronto,  
in the Province of Ontario**

**BANKRUPTCY O R D E R**

**UPON** the bankruptcy application of Freeport Financial LLC (“**Freeport**”), Agent for certain financial institutions (the “**Lenders**”) that have provided financing to PRACS Institute of Canada B.C. LTD. (“**PRACS Canada**”), filed this day;

**AND UPON** reading the Bankruptcy Application and the Affidavit of Verification of Don Bobbs attached thereto and the Consent of PricewaterhouseCoopers Inc. (“**PwC**”) to act as trustee in bankruptcy, filed;

**AND UPON** hearing submissions of counsel for Freeport and counsel for PwC in its capacity as court-appointed receiver, without security, over all of the assets, undertakings and property of PRACS Canada;

**AND UPON** it appearing to the Court that during the six month period immediately prior to the date of this Bankruptcy Application, PRACS Canada ceased to meet its liabilities generally as they become due, an act of bankruptcy,



1. **THIS COURT ORDERS** that any requirement for notice of this Bankruptcy Application is hereby dispensed with so that this Bankruptcy Application is properly returnable today and hereby dispenses with any or other service thereof.
  2. **THIS COURT ORDERS** that PRACS Canada is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against PRACS Canada.
  3. **THIS COURT ORDERS** that PwC, of the City of Toronto, in the Province of Ontario, be and is hereby appointed Trustee of the estate of the said bankrupt.
  4. **THIS COURT ORDERS** that the said Trustee give security in the amount to be fixed by the Official Receiver pursuant to subsection 16(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
  5. **THIS COURT ORDERS** that the costs of and incidental to this application and order be paid to the Applicant out of the assets of the estate upon taxation thereof or upon further order of the Court.
-

IN THE MATTER OF THE BANKRUPTCY OF PRACS Institute Canada B.C. Ltd.

Court File No:

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**BANKRUPTCY ORDER**

**McMILLAN LLP**  
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Lawyers for the Applicant


**TAB 7**

IN THE MATTER OF THE BANKRUPTCY OF  
PRACS INSTITUTE CANADA B.C. LTD.  
OF THE CITY OF TORONTO,  
IN THE PROVINCE OF ONTARIO

PRICEWATERHOUSE COOPERS INC., hereby consents to act as Trustee of the estate PRACS  
Institute Canada B.C. LTD., a bankrupt.

PricewaterhouseCoopers Inc.  
Per:

May 27, 2013

  
\_\_\_\_\_  
Michelle Pickett  
Senior Vice-President

FREEPORT FINANCIAL LLC  
Applicant

and

PRACS Institute Canada B.C. Ltd.  
Respondent

Court File No: CV-13-10046-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANT  
(returnable June 10, 2013)**

**McMILLAN LLP**  
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Lawyers for the Applicant