

**CROSS-BORDER INSOLVENCY PROTOCOL  
FOR 360NETWORKS INC. AND ITS AFFILIATED COMPANIES**

1. Certain defined terms used in this Protocol shall have the meanings assigned to them in Appendix “A”.
2. The 360 Group has developed this Protocol which when approved by the Canadian Court and the U.S. Court shall govern the conduct of all parties in interest in the Insolvency Proceedings.
3. The Parent is a Nova Scotia company extra provincially registered in British Columbia and is the ultimate parent company of an enterprise that operates through its various subsidiaries and affiliates, in Canada, the United States and various other countries throughout the world.
4. The Parent and the 360 Canada Group have commenced the Canadian Proceedings by filing an application under the applicable provisions of the *Companies’ Creditors Arrangement Act* in the British Columbia Supreme Court. The Parent and the 360 Canada Group have sought the CCAA Order pursuant to which:
  - (a) the Parent and the 360 Canada Group have been determined to be entities to which the CCAA applies, all proceedings in Canada have been stayed as against them and they have been authorized to continue reorganization steps under the CCAA; and
  - (b) the Monitor was appointed as monitor of the Parent and the 360 Canada Group, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA Order.
5. The 360 US Group have commenced the U.S. Proceedings under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101-1330 in the United States Bankruptcy Court for the Southern District of New York. The members of the 360 U.S. Group are continuing in possession of their respective properties managing their respective businesses as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The U.S. Trustee has not yet appointed any official U.S. Committee in the U.S. Proceedings.

**Purpose and Goals**

6. While the Insolvency Proceedings are pending in Canada, the United States and elsewhere for the 360 Group, the implementation of basic administrative procedures is necessary to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto and ensure the maintenance of the Court’s independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and

objectives in both the U.S. Proceedings and the Canadian Proceedings and, to any extent necessary, the Foreign Proceedings:

- (a) harmonize and coordinate activities in the Insolvency Proceedings before the Canadian Court, the U.S. Court and any foreign court;
- (b) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- (c) honour the independence and integrity of the Courts and other courts and tribunals of Canada, the United States or other countries;
- (d) promote international cooperation and respect for comity among the Courts, the 360 Group, the Committees, the Estate Representatives and other creditors and interested parties in the Insolvency Proceedings;
- (e) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the creditors of the 360 Group and other interested parties, wherever located; and
- (f) implement a framework of general principles to address basic administrative issues arising out of the cross-border and international nature of the Insolvency Proceedings.

### **Comity and Independence of the Courts**

7. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the 360 Group nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

8. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the Canadian Proceedings.

9. In accordance with the principles of comity and independence established in the two preceding paragraphs, nothing contained herein shall be construed to:

- (a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or "limited notice" basis;

- (b) require the 360 Group, the Committee or the Estate Representatives to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;
- (c) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or
- (d) preclude any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

10. The 360 Group, the Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

### Cooperation

11. To assist in the efficient administration of the Insolvency Proceedings, the 360 Group, the Committee and the Estate Representatives shall:

- (a) reasonably cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and
- (b) take any other reasonable steps to coordinate the administration of the U.S. Proceedings and the Canadian Proceedings for the benefit of the 360 Group's respective estates and stakeholders.

12. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each shall use its best efforts to coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. The U.S. Court and the Canadian Court may communicate with one another with respect to any matter relating to the Insolvency Proceedings and may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Proceedings and the Canadian Proceedings, in circumstances where both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Proceedings and the Canadian Proceedings. With respect to any such hearing, unless otherwise ordered, the following procedures will be followed:

- (a) a telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court;

- (b) any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing shall file such materials, which shall be identical insofar as possible and shall be consistent with the procedure and evidentiary rules and requirements of each Court, in advance of the time of such hearing or the submissions of such application. If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of either court, it shall be entitled to file such materials without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from the Court to which it does not wish to attorn;
- (c) submissions or applications by any party shall be made only to the Court in which such party is appearing, unless specifically given leave by the other Court to make submissions or applications to it;
- (d) the Judge of the U.S. Court and the Justice of the Canadian Court who will hear any such application shall be entitled to communicate with each other in advance of the hearing on the application, with or without counsel being present, to establish guidelines for the orderly submission of pleadings, papers and other materials and the rendering of decisions by the U.S. Court and the Canadian Court, and to deal with any related procedural, administrative or preliminary matters; and
- (e) the Judge of the U.S. Court and the Justice of the Canadian Court, having heard any such application, shall be entitled to communicate with each other after the hearing on such application, without counsel present, for the purpose of determining whether consistent rulings can be made by both Courts, and the terms upon which such rulings shall be made, as well as to address any other procedural or non-substantive matter relating to such applications.

13. Notwithstanding the terms of the preceding paragraph, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to:

- (a) matters presented to such Court; and
- (b) the conduct of the parties appearing in such matters.

### **Retention and Compensation of Estate Representatives and Professionals**

14. The Monitor, the Affiliated Professionals, the Canadian Representatives and Canadian Professionals appointed in the Canadian Proceedings shall all be subject to the sole and exclusive jurisdiction of the Canadian Court with respect all matters, including:

- (a) their tenure in office;
- (b) their retention and compensation;
- (c) their liability, if any, to any person or entity, including the 360 Canada Group and any third parties, in connection with the Insolvency Proceedings; and
- (d) the hearing and determination of any matters relating to them arising in the Canadian Proceedings under the CCAA or other applicable Canadian law.

15. The Monitor, Affiliated Professionals, Canadian Representatives and Canadian Professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Monitor, Affiliated Professionals, Canadian Representatives and Canadian Professionals:

- (a) shall be compensated for their services solely in accordance with the CCAA and other applicable Canadian law or orders of the Canadian Court; and
- (b) shall not be required to seek approval of their compensation in the U.S. Court.

16. The Monitor and any Affiliated Professionals and their officers, directors, employees, counsel and agents, wherever located, shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor and its Affiliated Professionals shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor or carrying out of the provisions of the CCAA Order by the Monitor or its Affiliated Professionals, except any such liability arising from actions of the Monitor or its Affiliated Professionals constituting gross negligence or willful misconduct.

17. Any U.S. Representative appointed in the U.S. Proceedings and any examiner or trustee appointed in accordance with section 1104 of the Bankruptcy Code, shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including:

- (a) their tenure in office;
- (b) their retention and compensation;

- (c) their liability, if any, to any person or entity, including the 360 U.S. Group and any third parties, in connection with the Insolvency Proceedings; and
- (d) the hearing and determination of any other matters relating to them arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States.

18. The U.S. Representatives shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives:

- (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and
- (b) shall not be required to seek approval of their compensation in the Canadian Court.

19. Nothing in this Protocol shall be deemed to subject the Monitor to the jurisdiction of the U.S. Court or any court in the United States. To the extent that the Monitor may from time to time utilize the services and expertise of Affiliated Professionals in performing its role as monitor in the Canadian Proceedings, those Affiliated Professionals may include employees of, partners in or other individual affiliated with the Monitor in any jurisdiction including the United States. All services provided by such Affiliated Professionals in connection with the provision of monitoring services to the 360 Group, including services provided by individuals affiliated with the Monitor, shall be billed to the 360 Canada Group by and through the Monitor and shall be subject to the procedures and standards for review and approval of compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the Canadian Court, and shall be subject to review and approval solely by the Canadian Court.

### **Rights to Appear and Be Heard**

20. Each of the 360 Group, their creditors and other interested parties in the Insolvency Proceedings, including the Canadian Representatives and the U.S. Representatives, shall have the right and standing to:

- (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as a creditor and other interested party domiciled in the forum country, but solely to the extent such party is a creditor or other interested party in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum; and
- (b) file notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Insolvency Proceedings; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the U.S. Committee in the Canadian

Proceedings or the Canadian Committee in the U.S. Proceedings, shall not form a basis for personal jurisdiction in Canada over the members of the U.S. Committee or vice versa. Notwithstanding the foregoing, and in accordance with the policies set forth above:

- (i) the Canadian Court shall have jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and
- (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

### Notice

21. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings and notice of any related hearings or other proceedings mandated by applicable law in connection with the Insolvency Proceedings or the Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following:

- (a) to creditors, including Estate Representatives, and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and
- (b) to the extent not otherwise entitled to receive notice under subpart (a) of this paragraph, to:
  - (i) the Parent, 1066 West Hastings Street, Vancouver, B.C., Canada, V6E 3X1, attention: Catherine McEachern, Vice-President;
  - (ii) U.S. Bankruptcy Counsel, Willkie Farr & Gallagher, 787 Seventh Avenue, New York, New York, U.S.A., 10019, attention: Alan J. Lipkin, Esq.; and
  - (iii) CCAA counsel, Fasken Martineau DuMoulin LLP, 2100 - 1075 West Georgia Street, Vancouver, B.C., V6E 3G2, Canada, attention: Michael A. Fitch, Q.C.;
  - (iv) the Monitor and its counsel, PricewaterhouseCoopers LLP, 601 West Hastings Street, Vancouver, B.C., V6B 5A5, Canada, attention: David Bowra;
  - (v) counsel to any statutory committee or any other official appointed in the U.S. Cases or the Canadian Cases; and

- (vi) the Office of the United States Trustee, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York, U.S.A., 10004;

and such other parties as may be designated by either Court from time to time.

### **Joint Recognition of Stays of Proceedings Under the Bankruptcy Code and the CCAA**

22. In recognition of the importance of the Canadian Stay affecting creditors of the 360 Canada Group, their directors and others, and to the extent appropriate, the U.S. Court shall extend and enforce the Canadian Stay in the United States (to the same extent such stay of proceedings and actions is applicable in Canada) to prevent adverse actions against the 360 Canada Group, their directors and the assets, rights and holdings of the 360 Canada Group in the United States. In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding:

- (a) the interpretation and application of the Canadian Stay and any orders for the Canadian Court modifying or granting relief from the Canadian Stay; and
- (b) the enforcement in the United States of the Canadian Stay.

23. In recognition of the importance of the U.S. Stay affecting creditors of the 360 U.S. Group and their assets under section 362 of the Bankruptcy Code for the benefit of the 360 Group and their respective estates and stakeholders, and to the extent appropriate, the Canadian Court shall extend and enforce the U.S. Stay in Canada (to the same extent such stay of proceedings and actions is applicable in the United States) to prevent adverse actions against the assets, rights and holdings of the 360 U.S. Group in Canada. In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding:

- (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and
- (b) the enforcement in Canada of the U.S. Stay.

24. Nothing contained herein shall affect or limit the 360 Group or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

### **Effectiveness; Modification**

25. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

26. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provision contained in this Protocol.



### **Procedure for Resolving Disputes Under the Protocol**

27. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice as set forth above. Where an issue is addressed to only one Court, in rendering a determination in any such dispute, such Court:

- (a) shall consult with the other Court; and
- (b) may, in its sole discretion, either:
  - (i) render a binding decisions after such consultation;
  - (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court; or
  - (iii) seek a joint hearing of both Courts.

28. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

### **Foreign Proceedings**

29. To the extent that Foreign Proceedings are initiated, all persons affected hereby shall to the greatest extent possible, and provided that all creditors in such Foreign Proceedings are treated equally irrespective of their place of domicile, implement the procedures contemplated hereby in any Foreign Proceedings and be governed to the greatest extent possible by the purpose and policies of this Protocol in dealings related to the Foreign Proceedings.

30. If the Canadian Court enters an order approving a protocol with the courts of a jurisdiction other than the U.S. Court, the U.S. Court shall honour such protocol to the extent permitted by the laws and treaties of the United States and consistent with the principles of comity and cooperation.

31. If the U.S. Court enters an order approving a protocol with the courts of a jurisdiction other than the Canadian Court, the Canadian Court shall honour such protocol to the extent permitted by the laws and treaties of Canada and consistent with the principles of comity and cooperation.

### **Preservation of Rights**

32. Neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall prejudice or affect the powers, rights, claims and defenses of the 360 Group and their estates, the Estate Representatives, the U.S. Trustee or any of the 360 Group creditors or equity holders under applicable law, including the Bankruptcy Code and the CCAA.

33. This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, trustees (including any trustees of the 360 Group under chapters 7 or 11 of the *Bankruptcy Code*), and receivers, receiver-managers, trustees or custodians appointed under Canadian law, as the case may be.

34. Nothing contained herein shall alter the obligations of any number of the 360 U.S. Group to pay fees due under 28 U.S.C. § 1930(a)(6) based upon all disbursements made by U.S. Debtors in any jurisdictions

## APPENDIX “A”

The following terms shall have the following definitions:

- (a) “Affiliated Professionals” means any person or corporation in any manner related to the Monitor who provides professionals services in furtherance of the Insolvency Proceedings, the restructuring and reorganization of the 360 Group or any member thereof or who provides any professional service in the normal course of the business of any member of the 360 Group;
- (b) “Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101 *et. seq.*;
- (c) “Canadian Court” means the Supreme Court of British Columbia which is seized of the Canadian Proceedings and any Court which considers an appeal therefrom;
- (d) “Canadian Proceedings” shall mean those proceedings commenced under the CCAA in the Canadian Court in the Supreme Court of British Columbia, Vancouver Registry;
- (e) “Canadian Professionals” shall mean any person or corporation retained by any of the Monitor, the 360 Group, or the Canadian Committees as approved by the Court who provides services of a professional nature in furtherance of the Canadian Proceedings or the restructuring or reorganization contemplated by the Canadian Proceedings;
- (f) “Canadian Committees” shall mean any person, corporation or group appointed in the Canadian Proceedings to represent the interests of any one or more group of creditors or other interested parties;
- (g) “Canadian Representatives” shall mean the Monitor, the Affiliated Professionals, the Canadian Committees and the Canadian Professionals;
- (h) “Canadian Stay” means the stay of proceedings contained in the CCAA Order as it may be amended from time to time;
- (i) “CCAA” means the Companies’ Creditors Arrangement Act R.S.C. 1985, c. C-36 as amended from time to time;
- (j) “CCAA Order” means that Order made in the Canadian Proceedings dated June 28, 2001 and any other orders or consequential orders that vary, amend or alter the CCAA Order;

- (k) “Court” means any court wherever located wherein proceedings are taken so as facilitate the object of the restructuring and reorganization of the 360 Group.
- (l) “Estate Representatives” means the U.S. Representatives and the Canadian Representatives;
- (m) “Foreign Proceedings” means any proceedings brought in countries other than the United States or Canada for the purposes of effecting a restructuring and reorganization of the business and affairs of any member of the 360 Group;
- (n) “Insolvency Proceedings” means the Canadian Proceedings and the U.S. Proceedings and any other Foreign Proceedings that may be required for the reorganization and restructuring of the 360 Group;
- (o) “Monitor” means PricewaterhouseCoopers Inc. appointed pursuant to the CCAA Order to monitor the affairs of certain members of the 360 Group;
- (p) “Parent” means 360networks inc.;
- (q) “Protocol” means this Cross-Border Insolvency Protocol as amended from time to time;
- (r) “360 Group” means those companies listed in Schedule “A” hereto and includes the Parent, 360 Canada Group and 360 U.S. Group;
- (s) “360 Canada Group” means those companies listed in Schedule A-1;
- (t) “360 U.S. Group” means those companies listed in Schedule A-2;
- (u) “U.S. Committee” means that committee appointed under the Bankruptcy Code to represent the interests of creditors or other parties in the U.S. Proceeding;
- (v) “U.S. Court” means the United States Bankruptcy Court for the Southern District of New York and any Court which hears an appeal therefrom;
- (w) “U.S. Proceeding” means that proceeding commenced in the U.S. Bankruptcy Court for the Southern District of New York by the 360 U.S. Group;
- (x) “U.S. Professional” means any person or corporation retained pursuant to Sections 327 or 1104 of the Bankruptcy Code the U.S. Proceedings;
- (y) “U.S. Representatives” means the U.S. Committee and the U.S. Professionals;

- (z) “U.S. Stay” means that automatic stay of proceedings arising in the U.S. Proceedings or that applies under the Bankruptcy Code or as may be ordered or amended by the U.S. Court; and
- (aa) “U.S. Trustee” means the United States Trustee in the U.S. Proceedings.