

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**IN RE:** § **CASE NO. 17-51926-rbk**  
**CROSSROADS SYSTEMS, INC.** §  
**Debtor** § **CHAPTER 11 PROCEEDING**

**DEBTOR’S EXPEDITED MOTION FOR AN ORDER AUTHORIZING  
EMPLOYMENT AND PAYMENT OF PROFESSIONALS UTILIZED IN  
THE ORDINARY COURSE OF BUSINESS**

COMES NOW Crossroads Systems, Inc., a Delaware corporation, (“CRS” or the “Debtor”), debtor-in-possession in the above-referenced chapter 11 case, files this *Debtor’s Expedited Motion for an Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business* (the “Motion”) and in support thereof, respectfully represents as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

2. To preserve the value of its assets and restructure its financial affairs, on August 13, 2017 (the “Petition Date”), the Debtor commenced the above captioned case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case, and no committees have been appointed or designated.

3. On August 13, 2017 in connection with the first day hearings in the Chapter 11 Case, the *Statement of Background Information and Declaration of Jennifer Crane, Chief Financial Officer of Crossroads Systems, Inc., in Support of Debtor's Chapter 11 Petition and First-Day Motions* [Docket No. 4] (the "First Day Declaration")<sup>1</sup> was filed with the Court.

4. The Debtor desires to continue to employ and retain the services of the professionals on the attached **Exhibit A** (the "Ordinary Course Professionals") while operating as debtor-in-possession under the Bankruptcy Code to enable it to continue normal business activities that are essential to its stabilization and reorganization efforts. The work of the Ordinary Course Professionals, albeit ordinary course, is directly related to the preservation of the value of the Debtor's estate, even though the amount of fees and expenses incurred by the Ordinary Course Professionals represents only a fraction of that value. Although the automatic stay and other issues in this case may decrease the Debtor's need for certain Ordinary Course Professionals' services, the Debtor cannot now quantify or qualify its needs.

#### **Relief Requested**

5. By this Motion, the Debtor respectfully requests, pursuant to Bankruptcy Code §§ 105(a), 327, 330, and 331, the entry of an order authorizing, but not directing, the Debtor (a) to retain Ordinary Course Professionals without the necessity of a separate, formal retention application approved by this Court for each Ordinary Course Professional, and (b) to pay each Ordinary Course Professional for post-petition services rendered and expenses incurred, subject to certain limits set forth below, without the necessity of additional court approval.

6. Although the Debtor believes the Ordinary Course Professionals are not "professional persons" as contemplated by Bankruptcy Code § 327 and, thus, that no retention or

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

payment authorization is necessary, out of an abundance of caution the Debtor seeks an order authorizing the retention and payment of all Ordinary Course Professionals as of the Petition Date or the applicable date of engagement.

**A. Proposed Ordinary Course Professional Procedures**

7. The Debtor proposes the following procedures in recognition of the importance of providing information regarding Ordinary Course Professionals to the Court and the United States Trustee.

8. The Debtor proposes it be permitted to continue to employ and retain the Ordinary Course Professionals. Within twenty (10) days of the entry of an order granting the relief requested herein, each Ordinary Course Professional will be required to provide to the Debtor and its counsel, for filing with the Court and service upon: (i) the United States Trustee for the Western District of Texas; and (ii) counsel for 210 (collectively, the “Notice Parties”), a declaration pursuant to Section 1746 of title 28 of the United States Code, substantially in the form annexed hereto as **Exhibit B**, certifying that the professional does not represent or hold any interest adverse to the Debtor or the estate with respect to the matter on which the professional is to be employed (the “Declaration”).

9. The Debtor further requests that upon the later of (i) the entry of this Order or (ii) service of each required Declaration, the Notice Parties will have ten (10) days (the “Objection Deadline”) to object to the retention of the Ordinary Course Professional in question. Any such objections must be filed with the Court and served upon the Debtor, the Debtor’s counsel, the Notice Parties, and the subject Ordinary Course Professional by the Objection Deadline. If any such objection cannot be resolved and withdrawn within ten (10) days after service, the matter will be scheduled for hearing before the Court on the next regularly scheduled hearing date or such

other date that may be agreeable to the Ordinary Course Professional, the Debtor, and the objecting party. If no objection is received on or before the Objection Deadline, if any objection is withdrawn, or if any objection submitted is timely resolved, the Debtor will be authorized to retain the Ordinary Course Professional as a final matter without further order of the Court, as of the Petition Date or the applicable date of engagement.

10. The Debtor also requests that it be authorized to employ and retain additional Ordinary Course Professionals not currently listed on Exhibit A as future circumstances require (the “Additional Ordinary Course Professionals”), without the need to file individual retention applications or provide further hearing or notice to any party, by filing with the Court a supplement to Exhibit A (the “Supplement”) and serving a copy of the Supplement upon the Notice Parties.

11. The Debtor proposes that, as with the Ordinary Course Professionals, each Additional Ordinary Course Professional be required to provide to the Debtor and its counsel, for filing with the Court and service upon the Notice Parties, a Declaration within twenty (20) days after the filing of the Supplement. The Notice Parties will have ten (10) days after service of each required Declaration to object to the retention of the Additional Ordinary Course Professional in question. Any objection would be handled as set forth herein. If no objection is timely submitted, the objection is withdrawn, or the objection submitted is timely resolved, the Debtor would be authorized to retain the Additional Ordinary Course Professional as a final matter without further order, *nunc pro tunc* to the date of filing the Supplement or the applicable date of engagement.

**B. Proposed Payment Procedures**

12. The Debtor seeks authority to pay, without formal application to and order from the Court, the fees and expenses of each Ordinary Course Professional upon submission to, and approval by, the Debtor of an appropriate invoice setting forth in reasonable detail the nature of

the post-petition services rendered and expenses incurred. The Debtor shall likewise submit such invoices to the Notice Parties for review. The Notice Parties shall have five (5) business days to review any such invoices. If a Notice Party objects to the payment of an invoice or the amount of an invoice, the Notice Party must provide notice to the Debtor, the other Notice Parties, and the applicable Ordinary Course Professional of the objection prior to the conclusion of the five (5) day review period. If the objection is not resolved within ten (10) days, the Debtor shall file a motion seeking approval of the payment to the Ordinary Course Professional.

13. The Debtor proposes that it be permitted to pay up to \$30,000 per month to each of the Ordinary Course Professionals, without formal application to the Court by any Ordinary Course Professional, one-hundred percent (100%) of their fees and expenses upon the submission to the Debtor and the Notice Parties of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, provided the applicable review period has passed and no objection has been raised. The Debtor further proposes that it be permitted to pay Ordinary Course Professionals prior to the conclusion of the aforementioned review period, provided that the Notice Parties may seek to claw-back any such payments pursuant to the objection procedures contained in the foregoing paragraph.

14. In the event the total amount to be paid to an Ordinary Course Professional exceeds \$30,000 in a given month, the Ordinary Course professional will be required to submit a fee application.

15. In the ordinary course of business, as a routine matter, the Debtor reviews all bills received from the Ordinary Course Professionals to assess the reasonableness of the fees charged and the necessity of the expenses incurred. This type of review will continue post-petition and,

coupled with the review by the Notice Parties should protect the Debtor's estate against excessive and improper billings.

**C. Periodic Payment Statements**

16. Within thirty (30) days after the end of, and with respect to, each full three-month period after the Petition Date (including any initial partial month in the first period), the Debtor proposes to file a periodic payment summary statement with the Court and to serve such statement upon the Notice Parties. The summary statement will include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the statement period; and (c) a general description of the services rendered by such Ordinary Course Professional. The obligation to file summary statements will terminate upon confirmation of a plan in the Chapter 11 Case.

**Basis for Relief Requested**

17. The Debtor does not believe that the Ordinary Course Professionals are "professionals" within the meaning of Bankruptcy Code § 327, whose retention must be approved by the Court, because the Ordinary Course Professionals will not be involved in administering the Chapter 11 Case. Rather, their employment is not central to the reorganization of the Debtor's business. *See In re Aladdin Petroleum Co.*, 85 B.R. 738, 740-41 (Bankr. W.D. Tex. 1988) (stating that in determining professional status, the Court should consider, among other factors, the effect of the services upon the administration of the bankruptcy case and how central that role is to the reorganization proceedings.); *see also, e.g., In re Am. Tissue, Inc.*, 331 B.R. 169, 173 (Bankr. D. Del. 2005) (stating that in determining professional status, courts should consider whether an entity or individual controls, manages, administers, invests, purchases, or sells assets that are significant

to the debtor's reorganization, is involved in negotiating the terms of a plan of reorganization, and the extent to which such entity or individual is involved in the administration of the debtor's estate); *Elstead v. Nolden (In re That's Entm't Mktg. Group)*, 168 B.R. 226, 230 (N.D. Cal. 1994) (only retention of professionals whose duties are central to administration of estate requires prior court approval under Section 327); *In re Metro. Hosp.*, 119 B.R. 910, 915 (Bankr. E.D. Pa. 1990) (in determining whether employment under Section 327(a) is required, a court considers whether an individual or entity is a professional and someone assisting the trustee in the fulfillment of his or her official duties).

18. Nevertheless, out of an abundance of caution, the Debtor seeks the relief requested in this Motion to avoid any later controversy about employing and paying the Ordinary Course Professionals during the pendency of the Chapter 11 Case. As discussed above, the Debtor will seek specific authority under Bankruptcy Code § 327 to employ any Chapter 11 Professionals.

19. It would severely hinder the administration of the Debtor's estate if the Debtor was required (a) to submit to the Court an application, declaration, and proposed retention order for each Ordinary Course Professional, (b) to wait until such order is approved before such Ordinary Course Professional continues to render services, and (c) to withhold payment of the normal fees and expenses of the Ordinary Course Professionals until they comply with the compensation and reimbursement procedures applicable to Chapter 11 Professionals.

20. Under such conditions, there is a significant risk that some Ordinary Course Professionals would be unwilling to provide services, and that others would suspend services pending a specific court order authorizing the services. Since many of the matters for which the Ordinary Course Professionals provide services are active on a day-to-day basis, any delay or need to replace professionals could have adverse consequences on the Debtor's estate. For example, if

the expertise and background knowledge of the Ordinary Course Professionals with respect to the particular matters for which they were responsible prior to the Petition Date were lost, the estate undoubtedly would incur additional and unnecessary expenses because the Debtor would have to retain other professionals without such background and expertise, at potentially higher rates. It is therefore in the best interest of the Debtor's estate to avoid any disruption to the professional services required in the day-to-day operation of the Debtor's business.

21. Moreover, the requested relief will allow the Debtor to avoid additional fees that such Ordinary Course Professionals would charge in connection with preparing and prosecuting numerous interim fee applications.

22. To the best of the Debtor's knowledge, none of the Ordinary Course Professionals represents or holds any interest materially adverse to the Debtor or to its estate with respect to the matter in which the Debtor employs such Ordinary Course Professional. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtor, the Debtor does not believe that any of such claims constitute interests materially adverse to the Debtor, its estates, its creditors, or other parties in interest. Thus, Bankruptcy Code § 327(e) authorizes the Debtor to retain each Ordinary Course Professional. By this Motion, the Debtor is neither requesting to pay prepetition amounts owed to any of the Ordinary Course Professionals nor requiring the Ordinary Course Professionals to waive any claim against the Debtor.

**Request for Waiver of Stay**

23. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtor seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtor requests that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this

Motion is immediately necessary for the Debtor to be able to continue to operate its businesses and preserve the value of the estate.

WHEREFORE the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of August 2017.

**ERIC TERRY LAW, PLLC**

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**PROPOSED ATTORNEY FOR THE DEBTOR-IN-POSSESSION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this documents has been served on this 18<sup>th</sup> day of August, 2017 via Court's ECF System and/or via U.S. First Class Mail and email/fax if known to the top twenty unsecured creditors, counsel for 210, the United States Trustee, the holders of Preferred Interests, and any party requesting notice in this case. A copy of this document can also be downloaded on the Debtor's website at <https://www.crossroads.com>.

By: /s/ Eric Terry  
Eric Terry

**Exhibit A**

**Initial Ordinary Course Professionals**

<b>Professional</b>	<b>Type of Service Provided</b>
Fish & Richardson PC 60 South 6 <sup>th</sup> Street Minneapolis, MN 55402	IP Legal Support
Sprinkle IP Law Group - 1301 W. 25th Street, Suite 408 Austin, Texas 78705	IP legal support
PMB Helin Donovan 12301 Research Blvd. Bldg. 5, Suite 160 Austin, TX 78759	Auditors
Alvarez & Marsal Taxand, LLC 600 Madison Avenue 9 <sup>th</sup> Floor New York, NY 10022	NOL Support
Radabaugh Law Group 2001 Secretariat Dr. Austin, TX 78737	Contract Support
Blank Rome LLP 717 Texas Avenue, Suite 1400 Houston, TX 77002	IP Legal Support

**Exhibit B**

**Form of Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
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<b>IN RE:</b>	§	<b>CASE NO. 17-51926-rbk</b>
<b>CROSSROADS SYSTEMS, INC.</b>	§	
<b>Debtor</b>	§	<b>CHAPTER 11 PROCEEDING</b>

**DECLARATION OF [DECLARANT], ON BEHALF OF PROPOSED ORDINARY  
COURSE PROFESSIONAL [COMPANY NAME]**

I, **[Declarant]**, pursuant to Section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my information, knowledge, and belief:

1. I am **[Title]** of **[Company Name]**, located at **[Address]** (the "Company").
2. Crossroads Systems, Inc. (the "Debtor") has requested that the Company provide **[Type of Services]** to the Debtor, and the Company has consented to provide such services.
3. The Company may have performed services in the past and may perform services in the future, in matters unrelated to this Chapter 11 Case, for persons that are parties in interest in this case. As part of its customary practice, the Company is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be claimants or employees of the Debtor, or other parties in interest in this case. The Company does not perform services for any such person in connection with this case. In addition, the Company does not have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtor or its estate.
4. Neither I, nor any principal of, or professional employed by the Company has agreed to share or will share any portion of the compensation to be received from the Debtor with any other person other than the principals and regular employees of the Company.

5. Neither I, nor any principal of, or professional employed by the Company, insofar as I have been able to discover, holds or represents any interest adverse to the Debtor or its estate.

6. The Company believes that the Debtor owes it [**\$Amount**] for prepetition services.

7. At any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

8. I, or a representative of the Company, have read and am familiar with the requirements of the *Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this [**Date**] in [**City, State**].

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[**Declarant**]