

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**NOTICE OF HEARING AND MOTION AUTHORIZING DEBTORS TO ENTER INTO  
NETWORK TELECOMMUNICATIONS MANAGEMENT SERVICES AGREEMENT  
AND ENGAGEMENT PROPOSAL WITH IMPACT NETWORK SERVICES, INC.**

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TO: The parties-in-interest as identified in Local Rule 9013-3(a)(2).

1. Intrepid U.S.A., Inc., and its affiliated entities in the above-captioned cases (the “Debtors”) move the Court for the relief requested below and give notice of a hearing.

2. The Court will hold a hearing on this motion on November 10, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than November 5, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or served and filed by mail not later than November 1, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Local

Rule 1070-1. This proceeding is a core proceeding. The petitions commencing these Chapter 11 cases were filed on January 29, 2004 and April 12, 2004. The cases are now pending.

5. This motion arises under 11 U.S.C. § 363(b)(1) and Bankruptcy Rule 6004 and is filed pursuant to Bankruptcy Rules 9013 and 9014 and Local Rules 6004-1 and 9013.

6. Debtors request an order of the Court authorizing them to enter into the Network Telecommunications Management Services Agreement with Impact Network Services, Inc., which is attached as Exhibit A. In addition, Debtors request an order of the Court authorizing them to enter into the Engagement Proposal with Impact Network Services, Inc., which is attached hereto as Exhibit B. As set forth in greater detail below, Debtors' decision to enter into these agreements is supported by articulated and reasonable business justifications and is in the best interests of the estates and their creditors. Therefore, the Court should authorize the Debtors to enter into the agreements.

### **BACKGROUND**

7. The Debtors continue to operate their business as a debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Court has ordered, for procedural purposes only, joint administration of the Chapter 11 cases.

8. The Intrepid home health care business began in July 1994, and since that time, it has been based and headquartered in Edina, Minnesota. As of the filing date, the Intrepid umbrella of companies operated in 31 states, out of approximately 196 offices, with approximately 13,000 health care professionals which provided medically-necessary home health care services and therapies to approximately 125,000 patients annually, nearly all of whom are home-bound, incapacitated in some way, handicapped, elderly or otherwise physically disadvantaged to the extent that they have to rely on Intrepid for their health care in their homes. Intrepid also has a division of its business that provides staffing of nurses and health care

practitioners in hospitals and extended care facilities. The majority of its revenues are derived from its home health care business operations.

### **BACKGROUND FOR RELIEF REQUESTED**

9. Because of the nature of Debtors' business and the number of offices telecommunication service is vital to their operations. Debtors network telecommunications expenses are in excess of \$200,000 per four-week accounting period.

10. Under the Network Telecommunications Management Services Agreement, Impact will analyze and assess Debtors' network telecommunications expenses, services, and requirements to make recommendations regarding cost savings, and to undertake the actions necessary in order that those agreed-upon savings recommendations may be realized by Debtors.

11. Specifically, Impact will research, analyze, and identify opportunities for Debtors to reduce their telecommunications costs, and present such savings recommendations to Debtors. Impact will notify Debtors of their progress and their savings recommendations for the purpose of receiving Debtors' agreement and authorization to begin implementing all or part of such recommendations. Upon receiving such authorization from Debtors, Impact will begin implementing the savings recommendations, with either Debtors' resource support or additional resources from Impact, or both, to reduce the telecommunications cost of Debtors.

12. Debtors will pay Impact, on a monthly basis, an escalating percentage of the realized reduction in monthly network telecommunications costs.

13. Specifically, Debtors will pay Impact 25% of the reduction in monthly network telecommunications costs of the first \$20,000 in savings, 35% of the reduction in monthly network telecommunications costs of the next \$20,000 in savings (from \$20,000 to \$40,000 in savings), and 50% of the reduction in monthly network telecommunications costs of any savings

over \$40,000. Debtors will also pay Impact 50% of the refund or credit from any one-time, non-recurring event such as a promotional credit, or recovered overcharges.

14. Under the Engagement Proposal, Debtors will receive Impact's proprietary network invoice management software at no additional cost.

### **RELIEF REQUESTED**

15. The Court should authorize the Debtors to enter into the Network Telecommunications Management Services Agreement and Engagement Proposal under 11 U.S.C. § 363(b)(1). These agreements will enable Debtors to realize savings in their telecommunications expenses and enable Debtors to use Impact's proprietary network invoicing management software program. These services and license are obtained without the payment of a guaranteed or upfront fee. Debtors are only obligated to pay Impact a certain percentage of the savings that are in fact realized.

16. Pursuant to Local Rule 9013-2(d), the facts set forth in this Motion have been verified and the Motion is accompanied by a Memorandum, Proposed Order, and proof of service.

17. Pursuant to Local Rule 9013-2(c), Debtors give notice that they may, if necessary, call Dennis I. Simon, CEO, or Gregory Von Arx, CFO of Debtors to testify at the hearing on the Motion. Their business addresses are Intrepid U.S.A., Inc., 6600 France Avenue South, Suite 510, Edina, Minnesota 55425.

WHEREFORE, Debtors move the Court for an order authorizing them to enter into the Network Telecommunications Management Services Agreement and the Engagement Proposal, and for such further relief as the Court deems just and equitable.

Dated: October 12, 2004

/s/ Ryan T. Murphy

Clinton E. Cutler (#158094)

Ryan T. Murphy (#311972)

**FREDRIKSON & BYRON, P.A.**

4000 Pillsbury Center

200 South Sixth St.

Minneapolis, MN 55402

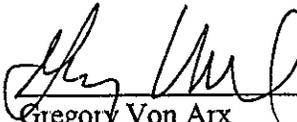
Telephone 612-492-7000

**ATTORNEYS FOR DEBTORS**

**VERIFICATION**

I, Gregory Von Arx, am the Chief Financial Officer of the Debtors in the above-captioned cases. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: October 12, 2004

  
\_\_\_\_\_  
Gregory Von Arx

#3021836\1

**NETWORK TELECOMMUNICATIONS MANAGEMENT  
SERVICES AGREEMENT**

This Agreement ("Agreement"), between Intrepid USA, Inc ("Intrepid"), a \_\_\_\_\_ Corporation, and Impact Network Services, Inc., a Minnesota Corporation ("Impact"), is entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**WHEREAS**, Intrepid desires to have Impact analyze and assess its network telecommunications expenses, services and requirements, to make recommendations regarding cost savings, and to undertake the actions necessary in order that those agreed-upon savings recommendations may be realized by Intrepid; and

**WHEREAS**, Impact is capable of and willing to undertake such analysis and make recommendations to Intrepid and, Intrepid desires to have Impact provide such network telecommunications cost reduction analysis and implementation services pursuant to the terms and conditions of this Agreement:

**NOW, THEREFORE**, in consideration of the premises and the agreements herein contained, the parties hereto agree as follows:

1. **Purpose and Duties of Impact** Impact agrees to perform network telecommunications analysis and implementation services to reduce Intrepid's network telecommunication costs pursuant to the terms and conditions herein. The services to be provided by Impact shall include the following:
  - (a) Research, analyze and identify opportunities for Intrepid to reduce their telecommunications costs, and present such savings recommendations (the "Recommendations") to Intrepid.
  - (b) Impact shall notify Intrepid of its progress and its Recommendations for the purpose of receiving Intrepid's agreement and authorization to begin implementing all or part of such recommendations.
  - (c) Upon such authorization from Intrepid, Impact will begin implementing the Recommendations, with either Intrepid's resource support or additional resources from Impact, or both, to reduce the telecommunications costs of Intrepid (the "Implementation Process") As provided herein, Impact will deliver to Intrepid a summary of the results and procedures that have been implemented on behalf of Intrepid in order to reduce its current and future network telecommunication costs.



(d) Impact will provide Intrepid with its proprietary network invoice management software program, INCMS (Impact Network Cost Management System), at no cost to Intrepid.

2. **Payment obligations of Intrepid**. In consideration for the services rendered by Impact pursuant to Section 1 herein, Intrepid hereby agrees to compensate Impact as follows:

**Monthly Cost Savings Fee**: Intrepid agrees to pay Impact, on a monthly basis, an amount equal to: (i) 25% of the reduction in the monthly network telecommunication costs of the first \$20,000 in savings for the immediately following 12 month period from the first complete month the reduction is realized on the specific providers invoice, and, (ii), 35% of the reduction in the monthly network telecommunications costs of the next \$20,000 in savings (from \$20,000 to \$40,000 in savings) for the immediately following 12 month period from the first complete month the reduction is realized on the specific providers invoice, and, (iii), 50% of the reduction in the monthly network telecommunications costs of any savings over \$40,000 for the immediately following 12 month period from the first complete month the reduction is realized on the specific providers invoice, and, (iiii), 50% of the refund or credit from any one-time, non-recurring events such as a promotional credit, or recovered overcharges related to paid carrier/vendor invoices that contained billing errors that are discovered by Impact (the “**Monthly Cost Savings Fee**”).

For purposes of such calculation, the Monthly Cost Savings Fee shall be calculated on a monthly basis and shall include, as compared to the agreed upon baseline, the reductions in Intrepid’ monthly network telecommunication costs arising from the Recommendations made by Impact, or arising out of Impact’s material involvement in analyzing, reviewing and implementing the cost savings opportunity, as agreed upon by Intrepid & Impact.

Example of Monthly Cost Savings Fee - By way of example only, in the event Impact negotiates a reduced local service fee with Intrepid’s local carrier and such reduced rate is demonstrated to reduce Intrepid’s local costs by \$2,000 per month, and Intrepid has already realized at least \$40,000 in monthly savings due to implementation of Impact’s recommendations, Impact shall be entitled to 50% of such savings, or \$1000 per month for a period of 12 months from the time such reduction is implemented and realized on the vendor invoice, for a total of \$12,000.

The analysis of the Monthly Cost Savings shall be prepared and documented by Impact in a spreadsheet format on a rolling forward basis for presentation to Intrepid. The Monthly Cost Savings Fee shall be invoiced on or about the 1st of every month for twelve months following the initial realization of the cost savings, and shall be due and payable within 15 days of the date of such invoice.

3. **Discretionary Bonus**. In consideration of the services rendered by Impact that may not be eligible for the Monthly Cost Savings Fee payment obligation of Intrepid

under the terms and conditions set forth under Section 2 herein, Intrepid will have the right and ability to provide Impact with a discretionary monetary bonus.

4. **Non-Circumvention**. Intrepid hereby agrees that in the event that Recommendations are delivered by Impact but not implemented, that it shall not implement such recommendations for a period of twelve months, or, to the extent that it chooses to implement a Recommendation within that twelve month period, it will be obligated to pay Impact under the terms and conditions set forth under Section 2 herein.

5. **Term of Agreement**. The term of this Agreement shall commence on the effective date of this Agreement and shall terminate after the Implementation of the Cost Savings Recommendations have been realized for 12 months (refer to example of Monthly Cost Savings in 2(b)). However, Impact shall have no further obligations to Intrepid (other than invoicing the Monthly Cost Savings) after the completion of the Implementation Process of any Recommendations, providing the deliverables as stated in section 1 are met.

6. **Termination of Agreement**. This Agreement may be terminated as follows:

(a) **Immediately for Cause**. Intrepid may terminate this Agreement, effective immediately, for "cause" (as hereinafter defined), in which case Intrepid shall have no further obligation or liability to Impact other than as set forth below. For the purposes hereof, "cause" shall mean: (i) Impact's violation of specific and lawful directions from Intrepid's Executive Management, which persists for a period of 30 days after a written notice is given of such violation; (ii) the commission of fraud or misappropriation of Intrepid's assets by Impact; or (iii) a material failure of Impact to perform or observe the provisions of this Agreement which persists for a period of 30 days after a written notice thereof is given to Impact; (iv) if an alternate designee can not be agreed upon this agreement can be terminated after written notice thereof is given to Impact. Upon termination for cause, to the extent that the Implementation of the Cost Reduction Recommendations have been initiated and it can be demonstrated that Intrepid will or has received the benefit of the reduction in its monthly telecommunication costs, as illustrated by a reduction in charges on the invoice provided by the appropriate provider, Intrepid shall be obligated to pay to Impact the Monthly Cost Savings Fee for the period provided in Section 2(b) herein.

(b) **Termination without Cause**. Either party may terminate this Agreement without cause upon 30 days notice to the other party. In the event of such termination, to the extent that the Implementation Process has been initiated and it can be demonstrated that Intrepid will or has received the benefit of the reduction in its monthly telecommunication costs, as illustrated by a reduction in charges on the invoice provided by the appropriate provider, Intrepid shall be obligated to pay to Impact the Monthly Cost Savings Fee for the period provided in Section 2(b) herein.



Attn: Michael Schwarzmann  
6600 France Avenue South, Suite #510  
Edina, MN 55435  
With a copy to:

Intrepid, Inc.  
Attn: General Counsel

11. **Inspection of Books and Records**. Upon reasonable request, each party shall make only those books and records that relate to this Agreement available to the other party for inspection and examination and permit copies to be made of such books and records. Impact shall also permit and cooperate with Intrepid in arrangements for verification of accounts by direct contact with account debtors or otherwise.

12. **Independent Contractor**. Except as otherwise noted in the Agreement, neither party or its employees shall be considered an employee, agent or representative of the other party. In addition, neither party has the authority to assume any obligations of or to make any commitments for the other party. Each party is responsible for the acts and omissions of its employees under this Agreement. Each party is solely responsible for supervising, directing, and paying its own employees, for withholding income taxes, and for providing social security, disability and other benefits. Impact will have appropriate agreements with its employees, agents, subcontractors and representatives to enable it to comply with all of its obligations under this Agreement.

13. **Confidentiality**. Each party agrees to not divulge, or communicate to any third party, nor use to the detriment of the other party, or for the benefit of any other business, firm, partnership, person, or corporation, or otherwise misuse any of the other party's confidential information, data, or trade secrets which are proprietary or confidential, including but not limited to, any customer lists, personnel information, purchasing, production, and marketing procedures and methods, distribution processes and methods, technical data, supplier lists, cost or pricing information, historical data, or any other business information or records, without the express written consent of the other party; provided, however, such restriction shall not apply to matters that are in the public domain through no breach of this Agreement, or the extent that required by law, or to the extent it is reasonably necessary to perform the obligations hereunder.

14. **Intellectual Property**. Any technology, system, application tool, process, know-how, methodology, software or other intellectual property (including any documentation relating thereto) to the extent owned by Impact as of the date of this Agreement or any technology, application tool, process, know-how or methodology acquired or developed by Impact on or after the date of this Agreement ("Impact Proprietary Rights") shall, to such extent, be and remain the exclusive property of Impact, unless otherwise agreed in writing by Impact. Intrepid shall have no rights or interests in any Impact Proprietary Rights except as expressly provided herein or as otherwise agreed in writing by Impact; provided, however, Impact grants to Intrepid a non-exclusive, royalty free license to use any end product, end-user application, software or other deliverable that is developed by Impact in the course of providing

services under this Agreement. However, any technology, application tool, process, know-how or methodology acquired or developed jointly by Impact and Intrepid on or after the date of this Agreement shall be jointly owned by Intrepid and Impact, to such extent, that Intrepid can have unrestricted rights to use it internally, but it will become and remain the exclusive property of Impact, unless otherwise agreed to in writing by Intrepid and Impact. Intrepid acknowledges that Impact is in the business of providing consulting services in network telecommunication management and related areas for other customers, and that Impact will continue these activities. Nothing in this Agreement shall preclude or limit Impact from providing such services and/or developing any products, end-user application, software, or other deliverable materials for itself or other customers, and to utilize the Impact Proprietary Rights in such regard irrespective of the possible similarity of structure, organization, and sequence to materials that Impact delivers to Intrepid pursuant to this Agreement, so long as such services and/or products do not incorporate Intrepid confidential information, or any technology, system, application tool, process, know-how, methodology, software or other intellectual property (including any documentation relating thereto) to the extent owned by Intrepid as of the date of this Agreement or any technology, application tool, process, know-how or methodology acquired or developed by Intrepid on or after the date of this Agreement (“Intrepid Proprietary Rights”) shall, to such extent, be and remain the exclusive property of Intrepid, unless otherwise agreed in writing by Intrepid.

15. **Entire Agreement**. This Agreement and any amendments referenced herein or attached hereto constitute the entire Agreement between the parties with respect to subject matter; all prior agreements and representations, statements, negotiations and undertakings are superseded hereby. Any amendments or modifications to this Agreement must be in writing specifically referencing and amending this Agreement and must be signed by duly authorized representatives of both parties.

16. **Assignment**. Neither party may assign this Agreement or any of its rights under this Agreement without the other party’s prior written consent, which consent shall not be unreasonably withheld. Any attempt to do so is void.

17. **Successors**. The parties agree that the terms, conditions and covenants hereto shall extend to, be binding upon, and inure to the benefit of the heirs, successors and personal representatives of the parties hereto. Further, Intrepid will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of Intrepid to expressly assume and agree to perform this Agreement in the same manner and to the same extent that Intrepid would have been required to perform it if no such succession had taken place.

18. **Force Majeure**. Neither party will be liable for its inability to perform to the extent caused by conditions beyond its reasonable control, including but not limited to Intrepid’s third-party telephone services provider or, labor disputes, perils or other hazards or acts of God.

19. **Invalidity**. If any portion of this Agreement is held invalid, such invalidity shall not affect the remaining portions of this Agreement.

20. **Waiver.** Failure or delay by either party to exercise any right, power, privilege or remedy will not constitute a waiver thereof. A waiver of default will not operate as a waiver of any other default or of the same type of default on a future occasion.

21. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

22. **Dispute Resolution.** Each party agrees to notify the other party of any dispute under this Agreement and provide such party a thirty (30) day period to cure the dispute. In the event the dispute is not resolved after such thirty (30) day cure period, the parties agree to then submit the dispute for resolution by executive officers of their companies. The executive officers agree to promptly meet to attempt to resolve the dispute. If the dispute is not resolved by the executive officers of the companies within thirty (30) days after meeting with each other, the dispute shall be resolved by arbitration in Minneapolis, Minnesota under the commercial rules of the American Arbitration Association. The parties agree that the determination reached by the American Arbitration Association shall be binding and its exclusive remedy for such disputes.

23. **Attorneys' Fees to Prevailing Party.** In the event any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing party, in addition to all other amounts such party shall be entitled to receive from the other party, shall be paid by the other party a reasonable sum for attorneys' fees and costs.

24. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by persons thereunto duly authorized effective as of the date first above written.

Impact:  
Impact Network Services, Inc.

Intrepid:  
Intrepid, Inc.

By: \_\_\_\_\_  
Richard Ezrilov, Its President

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**IMPACT ENGAGEMENT PROPOSAL  
FOR  
INTREPID USA HEALTHCARE SERVICES**

Impact proposes an engagement that is primarily focused on expedient cost reductions in Intrepid's network telecommunications expenses. In addition, Intrepid will receive Impact's proprietary network invoice management software program, INCMS (Impact Network Cost Management System), at no additional cost. The engagement compensation structure would consist of the following:

- **Monthly Savings Fee:** Intrepid will pay Impact 25% of the first \$20,000 in monthly savings; 35% of the monthly savings between \$20,000 and \$40,000, and; 50% of the monthly savings over \$40,000 that are achieved and realized by Intrepid as a result of the implementation of Impact's savings recommendations, for a period of twelve months. All subsequent and additional savings will be exclusively realized and kept by Intrepid.

Please refer to the attached Agreement for further details. Impact is ready and willing to begin our discovery and analysis as soon as September 13<sup>th</sup>. We are excited at the prospect of partnering with Intrepid, and look forward to your response.



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

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and Jointly Administered Cases,

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Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**MEMORANDUM IN SUPPORT OF MOTION AUTHORIZING DEBTORS  
TO ENTER INTO NETWORK TELECOMMUNICATIONS MANAGEMENT  
SERVICES AGREEMENT AND ENGAGEMENT PROPOSAL WITH  
IMPACT NETWORK SERVICES, INC.**

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**INTRODUCTION**

Debtors submit this memorandum in support of their motion under section 363(b)(1) for an order authorizing them to enter into a Network Telecommunications Management Services Agreement and Engagement Proposal with Impact Network Services, Inc. (“Impact”). Debtors’ decision to enter into these agreements are supported by articulated business justifications and are in the best interests of the estates and their creditors. Thus, the Court should enter an order authorizing Debtors to enter into the Network Telecommunications Management Services Agreement and Engagement Proposal.

**BACKGROUND**

The facts are drawn from and verified in the Motion. All capitalized terms are defined therein.

## ANALYSIS

### **THE COURT SHOULD AUTHORIZE THE DEBTORS TO ENTER INTO THE AGREEMENTS UNDER SECTION 363(b)(1)**

Bankruptcy Code section 363(b)(1) provides that the debtor-in-possession “after notice and a hearing, may use, sell or lease, other than the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve of the use of property outside of the ordinary course of business, the court need only determine that the debtor’s decision is supported by some articulated business justification. Four B v. Foodbarn Stores, Inc. (In re Foodbarn Stores, Inc.), 107 F.3d 558, 567 (8th Cir. 1997); Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment rule, the courts give deference to the debtor’s decision making. In re Schipper, 933 F.2d at 515.

Because of the nature of Debtors’ business and the number of offices telecommunication service is vital to their operations. Debtors network telecommunications expenses are in excess of \$200,000 per four-week accounting period. Under the Network Telecommunications Management Services Agreement, Impact will analyze and assess Debtors’ network telecommunications expenses, services, and requirements to make recommendations regarding cost savings, and to undertake the actions necessary in order that those agreed-upon savings recommendations may be realized by Debtors. As more fully described in the Motion, Debtors will pay Impact, on a monthly basis, an escalating percentage of the realized reduction in monthly network telecommunications costs. Under the Engagement Proposal, Debtors will receive Impact’s proprietary network invoice management software at no additional cost.

The Court should authorize the Debtors to enter into the Network Telecommunications Management Services Agreement and Engagement Proposal under 11 U.S.C. § 363(b)(1). These agreements will enable Debtors to realize savings in their telecommunications expenses and

enable Debtors to use Impact's proprietary network invoicing management software program. These services and license are obtained without the payment of a guaranteed or upfront fee. Debtors are only obligated to pay Impact a certain percentage of the savings that are in fact realized.

### **CONCLUSION**

In sum, Debtors respectfully request that the Court enter an order granting the relief requested in the Motion.

Dated: October 12, 2004

/s/ Ryan T. Murphy  
Clinton E. Cutler (#158094)  
Ryan T. Murphy (#311972)  
FREDRIKSON & BYRON, P.A.  
4000 Pillsbury Center  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 492-7000  
(612) 492-7077 (Facsimile)

ATTORNEYS FOR DEBTORS

#3021839\1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

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Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**CERTIFICATE OF SERVICE**

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Ryan T. Murphy, under penalty of perjury, states that on October 12, 2004 he caused to be served the following:

1. Notice Of Hearing And Motion Authorizing Debtors To Enter Into Network Telecommunications Management Services Agreement and Engagement Proposal With Impact Network Services, Inc.;
2. Memorandum In Support Of Motion Authorizing Debtors To Enter Into Network Telecommunications Management Services Agreement and Engagement Proposal With Impact Network Services, Inc.;
3. Order Authorizing Debtors To Enter Into Network Telecommunications Management Services Agreement and Engagement Proposal With Impact Network Services, Inc.; and
4. Certificate of Service

by sending true and correct copies via U.S. Mail as noted on the attached Service List.

Dated: October 12, 2004

/s/Ryan T. Murphy

Ryan T. Murphy

Dennis Simon  
Intrepid U.S.A., Inc.  
6600 France Avenue South  
Suite 510  
Edina MN 55425

Michael Massad/Steven Holmes  
Hunton & Williams  
30<sup>th</sup> floor, Energy Plaza  
1601 Bryan St  
Dallas TX 75201

Robert B. Raschke Esq  
U.S. Trustee's Office  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Roylene A. Champeaux  
D. Gerald Wilhelm  
Assistant US Attorney  
600 US Courthouse  
300 South Fourth Street  
Minneapolis MN 55415

MN Department of Revenue  
Collection Enforcement  
551 Bankruptcy Section  
P.O. Box 64447  
St. Paul, MN 55164

Internal Revenue Service  
Special Procedures Branch  
Stop 5700  
316 North Robert Street  
St. Paul, MN 55101

Blaine Holliday  
IRS Office of Chief Counsel  
650 Galtier Plaza  
380 Jackson Street  
St. Paul, MN 55101

Securities & Exchange Comm.  
Bankruptcy Section  
175 W Jackson Blvd.  
Suite 900  
Chicago IL 60604

DVI Financial Services, Inc.  
c/o Clark T. Whitmore  
Maslon Edelman et al.  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

DVI Business Credit Corp.  
Richard M. Beck, Esq.  
Klehr, Harrison, Harvey et al.  
260 South Broad Street  
Philadelphia PA 19102-3163

Todd J. Garamella  
c/o John McDonald  
Robins, Kaplan  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015

Attorneys for Creditors Committee

Jeffrey K. Garfinkle  
Buchalter Nemer et al.  
18400 Von Karman Ave, Suite 800  
Irvine CA 92612

George Singer  
Lindquist & Venum, P.L.L.P.  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2205

Requests for Notice

IRS/Special Procedures Branch  
c/o Barbara Zoccola  
200 Jefferson Ave, Suite 811  
Memphis TN 38103

Wendy S. Tien, Esq.  
US Dpt. of Justice, Civil Dvn  
P.O. 875, Ben Franklin Station  
Washington, DC 20004-0875

Keith E. Dobbins  
US Dpt. of Justice, Civil Division  
601 D Street, NW, Room 6613  
Washington, DC 20004-0875

Greg Bongiovanni  
Office of the General Counsel  
Dept. of Health & Human Svs  
Suite 5M60 AFC  
61 Forsyth St., SW  
Atlanta, GA 30303-8909

Bankruptcy Administration  
IOS Capital, LLC  
1738 Bass Road  
PO Box 13708  
Macon GA 31208-3708

U.S. Bank N.A.  
c/o Michael R. Stewart  
Faegre & Benson, LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

Lang-Nelson Associates  
c/o William I. Kampf  
220 South Sixth Street, #1800  
Minneapolis, MN 55402

Additional names for Intrepid II list

Keybank N.A.  
127 Public Square  
Cleveland OH 44114

Garamella Family Ltd. Ptnsp  
236 Oakwood Road  
Interlachen Park  
Hopkins MN 55343

David J. Fischer  
Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive  
Suite 3000  
Chicago, IL 60606-1229

Bank One  
c/o Sandra Lander  
400 Murray Street  
Alexandria LA 71301

Mpls Comm Dev Agency  
105 – 5<sup>th</sup> Ave S  
Minneapolis MN 55401

Affordable Housing Project  
c/o Fed Home Loan Bank  
907 Walnut St  
Des Moines IA 50309

MHFA  
ATTN: William Kuretsky  
400 Sibley St, Suite 300  
St Paul MN 55101

Neil Herskowitz  
Riverside Contracting LLC  
PO Box 626  
Planetarium Station  
New York, NY 10024-0540

CapitalSource Finance LLC  
c/o Steven Kluz, Sr., Esq.  
Rider Bennett, LLP  
333 South Seventh Street,  
Minneapolis, MN 55402

CapitalSource Finance LLC  
c/o Kenneth J. Ottaviano, Esq.  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**ORDER AUTHORIZING DEBTORS TO ENTER INTO NETWORK  
TELECOMMUNICATIONS MANAGEMENT SERVICES AGREEMENT  
AND ENGAGEMENT PROPOSAL WITH IMPACT NETWORK SERVICES, INC.**

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Intrepid U.S.A., Inc.'s, and the above-referenced affiliated entities' ("Debtors'") motion seeking authority to enter into the Network Telecommunications Management Services Agreement and Engagement Proposal with Impact Network Services, Inc. came before the undersigned United States Bankruptcy Judge on November 10, 2004. Appearances, if any, are noted on the record.

Based upon the arguments of counsel, all the files, records and proceedings herein, the Court being fully advised in the premises, and the Court's Findings of Facts and Conclusions of Law, if any, having been stated orally and recorded in an open court before the close of evidence:

IT IS HEREBY ORDERED:

1. The Debtors' Motion is granted.
2. Pursuant to 11 U.S.C. § 363(b)(1), Debtors are hereby authorized, but not required to, enter into the Network Telecommunications Management Services Agreement.

3. Pursuant to 11 U.S.C. § 363(b)(1), Debtors are hereby authorized, but not required to, enter into the Engagement Proposal.

Date: November \_\_, 2004

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United States Bankruptcy Judge

#3021849\1