

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |   |                         |
|---|---|-------------------------|
| In re:  | ) | Chapter 11              |
| EASTMAN KODAK COMPANY, <i>et al.</i> , <sup>1</sup> | ) | Case No. 12-10202 (ALG) |
| Debtors.  | ) | (Jointly Administered)  |

**STIPULATION AND ORDER BY AND AMONG EASTMAN KODAK  
COMPANY, ITS AFFILIATED DEBTORS AND CARESTREAM HEALTH INC.**

This stipulation and agreed order (the “**Stipulation and Order**”) is made by and among Eastman Kodak Company (“**Kodak**”), its affiliated debtors and debtors in possession (together with Kodak, the “**Debtors**”) and Carestream Health Inc. (“**IP Counterparty**”, and together with the Debtors, the “**Parties**”), by and through their respective undersigned counsel.

**RECITALS**

WHEREAS, Kodak and the IP Counterparty are party to the contracts listed on Exhibit 1 hereto (each, an “**Assumed Contract**”) and the contract listed on Exhibit 2 hereto (the “**Rejected Contract**” and together with the Assumed Contracts, the “**Stipulated Contracts**”);<sup>2</sup>

WHEREAS, Kodak and the IP Counterparty are party to the contracts listed on Exhibit 3 hereto (each, an “**Assigned Contract**”), which are not Stipulated Contracts;

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is 343 State Street, Rochester, NY 14650.

<sup>2</sup> All contracts listed in the exhibits attached hereto include all amendments, extensions, supplements and/or restatements.



WHEREAS, on June 24, 2013, the Debtors filed the *First Amended Chapter 11 Plan of Reorganization of Eastman Kodak Company and Its Affiliated Debtors* [Docket No. 4143] (the “**First Amended Plan**” and as may be amended, modified or supplemented from time to time, the “**Plan**”);<sup>3</sup>

WHEREAS, on June 26, 2013, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered an order approving, among other things, the disclosure statement and establishing procedures relating to the treatment of Executory Contracts and Unexpired Leases under the Plan [Docket No. 4167] (the “**Solicitation Procedures Order**”);

WHEREAS, on July 19, 2013, the Debtors filed the *First Notice of Proposed Assumption of Specified Contracts* [Docket No. 4395] and on July 30, 2013, filed the *Second Notice of Proposed Assumption of Specified Contracts* [Docket No. 4483], in accordance with the procedures set forth in the Solicitation Procedures Order, regarding Kodak’s proposed assumption of, among others, the Assumed Contracts;

WHEREAS, on July 26, 2013, the Debtors filed the *Notice of Proposed Assumption and Partial Assignment* [Docket No. 4444], regarding Kodak’s proposed assumption and partial assignment to KPP Trustees Limited (“**KPP**”) of, among others, the Material Supply Agreement between Kodak and the IP Counterparty, dated October 30, 2009 (the “**Material Supply Agreement**”);

WHEREAS, on August 15, 2015, the IP Counterparty filed the *Response and Reservation of Rights of Carestream Health, Inc. to Debtors’ Notices of Proposed Assumption of Specified Contracts; Debtors’ Notice of Proposed Assumption and Partial Assignment of*

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

*Contracts; Debtors' Notice of Proposed Assumption and Assignment of Contracts; and Debtors' Notice of Proposed Assumption and Delayed Assignment of Contracts* [Docket No. 4813] (the “**Carestream Reservation of Rights**”) reserving its rights with respect to the Debtors’ proposed assumption of the Assumed Contracts; and

WHEREAS, subject to the Court’s approval, in lieu of the procedures set forth in the Solicitation Procedures Order and to resolve any objections by the IP Counterparty to confirmation of the Plan, the Parties have elected to resolve such issues on the terms set forth herein.

### **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and the covenants and conditions contained herein, the Parties stipulate and agree as follows:

1. This Stipulation and Order shall be effective when approved and entered by the Bankruptcy Court.
2. The recitals above are incorporated by reference.
3. To the best of the Parties’ knowledge (with respect to the IP Counterparty, the employees with principal responsibility for these chapter 11 cases), the Stipulated Contracts and the Assigned Contracts represent the known executory contracts between any Debtor and the IP Counterparty (or their respective wholly owned and material affiliates) as of the date hereof; *provided*, however, that if either Party identifies additional executory contracts after the date hereof, the Parties shall confer and negotiate in good faith the treatment of such additional executory contracts.
4. Subject to the Carestream Reservation of Rights and pursuant to and in accordance with sections 365 and 1123(b)(2) under chapter 11 of title 11 of the United States

Code (11 U.S.C. §§ 101 *et seq.*) (as amended, the “**Bankruptcy Code**”) and the Plan, Kodak shall assume each Assumed Contract effective as of the Effective Date, and upon the Effective Date, each Assumed Contract shall vest in Reorganized Kodak in accordance with the terms of this Stipulation and Order.

5. Nothing in this Stipulation and Order, the Plan or the Confirmation Order permits the Debtors to assign any of the Assumed Contracts under section 363 or 365 of the Bankruptcy Code. The Debtors will not assign any of the Assumed Contracts as part of the Plan confirmation unless such assignment is (i) approved by further order of the Bankruptcy Court and (ii) consistent with the existing terms of such Assumed Contract. The Reorganized Kodak will not assign any of the Assumed Contracts unless such assignment is consistent with the existing terms of such Assumed Contract. To the extent that the Debtors seek to assign any of the Assumed Contracts under section 363 or 365 of the Bankruptcy Code, the IP Counterparty’s rights and defenses with respect to such proposed assignment are reserved. The Debtors have no current intention to assign any of the Assumed Contracts as part of the Plan confirmation process.

6. Subject to paragraph 10 of this Stipulation and Order and the Carestream Reservation of Rights, the IP Counterparty acknowledges and agrees that (i) the Debtors have cured all defaults under each Assumed Contract within the meaning of section 365(b), (ii) no amount or other compensation, including any compensation for any actual pecuniary loss resulting from a default under such Assumed Contract, is required to be paid to the IP Counterparty by the Debtors or the Reorganized Debtors in connection with the assumption of any Assumed Contract, and (iii) the Debtors have provided adequate assurance of future performance under section 365(b)(1)(C) of the Bankruptcy Code.

7. The IP Counterparty will not object to Kodak's rejection, as of the Effective Date, of the Rejected Contract pursuant to and in accordance with the Plan. The IP Counterparty shall have thirty (30) days to file a Proof of Claim with respect to any claim for damages arising from or relating to the rejection of such Rejected Contract.

8. The Parties agree that the Material Supply Agreement is a "Shared Contract", as such term is used in documentation executed in connection with the KPP Global Settlement.

9. For the avoidance of doubt, except as set forth herein, nothing in the Plan or the Confirmation Order:

a. shall limit the application or effect of the (i) *Order Authorizing (A) The Sale Of Patent Assets Free And Clear Of Claims And Interests, (B) The License Of Patents, (C) The Assumption Of Patent Cross License Agreements With Fujifilm And (D) The Settlement Of Claims Related To Certain Patents*, entered by the Court on January 11, 2013 [Docket No. 2847] or (ii) *Order (I) Approving (A) The KPP Global Settlement And (B) Procedures For The Assumption And Assignment Of Certain Contracts And (II) Authorizing The Debtors' (A) Entry Into Agreements With Respect To The Transfer Of The Document Imaging And Personalized Imaging Businesses And (B) Use, License And Lease Of Property Of The Estate In Connection Therewith*, entered by the Court on June 21, 2013 [Docket No. 4113], in each case, as such orders relate to any Assumed Contract;

b. shall limit, restrict, prejudice, impair or waive (i) any affirmative defense, other defense, counter- or cross-complaint or complaint for declaratory relief (other than an affirmative defense, other defense, counter- or cross-complaint or complaint for declaratory relief based on ownership of property of the Debtors' Estates constituting intellectual property or

inventorship or co-inventorship of any property of the Debtors' Estates constituting patents) in connection with any action, litigation or proceeding commenced or that may be commenced by or against the IP Counterparty, or (ii) any claims, rights, or remedies as to any of the IP Counterparty's intellectual property anywhere in the world that arise after the Effective Date, including in connection with the infringement of any such intellectual property. The foregoing shall not (i) amend, expand or otherwise alter any rights or remedies available to the IP Counterparty under any Assumed Contract or (ii) apply to any Administrative Claim or Claim in Classes 1, 2, 4, 7 or 8 that the IP Counterparty could have asserted against any of the Debtors, which Claims shall be resolved and discharged on the Effective Date pursuant to and in accordance with the Plan and the terms set forth herein; or

c. shall limit, restrict, prejudice, impair or waive in any way any Party's rights, defenses or remedies after the Effective Date with respect to any provision of the Assumed Contracts.

10. Nothing in this Stipulation and Order, the Plan or the Confirmation Order shall limit, restrict, prejudice, impair or waive in any way any Party's rights, defenses or remedies after the Effective Date to pursue or oppose any claims for information under the Assumed Contracts; *provided, however*, that the Reorganized Debtors shall not be able to assert that any such claim for information under the Assumed Contracts was discharged under the Plan or that any default arising from the Debtors' failure to provide such information was cured in connection with the assumption of the Assumed Contracts.

11. Notwithstanding anything in the Plan or Confirmation Order to the contrary, the respective rights of the IP Counterparty and the Debtors, in and to any and all easements and related agreements of record in the Offices of the Clerk of Monroe County, New

York and Weld County, Colorado shall be preserved and shall not be limited, restricted, prejudiced, impaired or waived after the Effective Date even if such easement and related real property rights have not been listed and filed by the Debtors as Assumed Contracts.

12. If the Debtors enter into a stipulation with any other counterparty to an intellectual property license agreement regarding the Debtors' proposed assumption of such license agreement and such stipulation expands the scope of the reservations of rights expressly set forth in paragraph 9 of this Stipulation and Order in a manner that is more favorable to such counterparty, the Debtors shall provide the IP Counterparty with a copy of such stipulation and the IP Counterparty may request in writing that paragraph 9 hereof be expanded to same extent with the Debtors' consent to such request not to be unreasonably withheld.

13. The Debtors agree to (i) include this Stipulation and Order in the Plan Supplement and (ii) insert language reasonably acceptable to the IP Counterparty in the Confirmation Order that provides that nothing in the Plan, the Confirmation Order or the implementation thereof shall modify, affect or otherwise override the terms of this Stipulation and Order.

14. This Stipulation and Order resolves any of the IP Counterparty's objections to the Plan and entry of the Confirmation Order. Subject to the terms hereof, the IP Counterparty agrees not to object to the Court's confirmation of the Plan and entry of the Confirmation Order, *provided* that the Debtors do not amend, modify or supplement the First Amended Plan or the Confirmation Order in a manner adverse to the IP Counterparty. To the extent that the Debtors amend, modify or supplement the First Amended Plan or the Confirmation Order in a manner adverse to the IP Counterparty, the IP Counterparty's rights to object to such amendments, modifications and supplements are reserved. For the avoidance of

doubt, in the event additional executory contracts between the Parties are identified by the Debtors or the IP Counterparty after the date hereof, the IP Counterparty agrees not to object to the Plan and entry of the Confirmation Order on the basis of such additional contracts.

15. This Stipulation and Order is entered into in order to resolve, settle and compromise any objections by the IP Counterparty to confirmation of the Plan and, subject to the Carestream Reservation of Rights, to the assumption of the Assumed Contracts between the Debtors and the IP Counterparty and to avoid the cost, expense and effort of litigation associated with such objections, and shall not be construed as an admission of liability of any Party or an admission relating to the merits of any dispute. No statement made or action taken in the negotiation of this Stipulation and Order may be used by any Party for any purpose whatsoever.

16. Each Party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby.

17. This Stipulation and Order shall bind and inure to the benefit of the Debtors, the Reorganized Debtors and their permitted successors and assigns and shall bind and inure to the benefit of the IP Counterparty and its permitted successors and assigns.

18. The language used in this Stipulation and Order will be deemed to be the language chosen by the Parties to this Stipulation and Order to express their mutual intent, and no rule of strict construction shall be applied against any Party. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

19. This Stipulation and Order contains all of the terms, conditions and representations and warranties agreed upon by the Parties relating to the assumption of the Assumed Contracts and any objections by the IP Counterparty to confirmation of the Plan and



supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the Parties, oral or written, respecting such subject matter. This Stipulation and Order may not be amended except by written agreement executed by all Parties hereto.

20. This Stipulation and Order may be executed in counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The Parties agree that the delivery of this Stipulation and Order may be effected by means of an exchange of signatures via facsimile transmission, .pdf or other electronic transmission.

21. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation and Order.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF and in agreement herewith, by and through their counsel, the Parties have executed and delivered this Stipulation and Order as of the date first set forth below.

Dated: August 15, 2013  
New York, New York

/s/ Andrew G. Dietderich

Andrew G. Dietderich  
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Debtors in Possession

/s/ William H. Schrag

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Counsel to Carestream Health, Inc.

SO ORDERED THIS 19th DAY OF AUGUST, 2013

/s/ Allan L. Gropper

HON. ALLAN L. GROPPER  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Assumed Contracts**

| <b><u>IP Manager<br/>File Number</u></b> | <b><u>Contract<br/>Counterparty</u></b> | <b><u>Contract</u></b>   | <b><u>Date of<br/>Agreement</u></b> | <b><u>Cure<br/>Amount</u></b> |
|--|---|--|-------------------------------------|-------------------------------|
| APS201100010                             | Carestream Health Inc.                  | Intellectual Property Agreement  | 4/30/2007                           | \$0                           |
| APS200700026                             | Carestream Health Inc.                  | Sublicense Under Intellectual Property Agreement                             | 4/30/2007                           | \$0                           |
| APS200700027                             | Carestream Health Inc.                  | Sublicense Under Intellectual Property Agreement                             | 4/30/2007                           | \$0                           |
| APS200700028                             | Carestream Health Inc.                  | Sublicense Under Intellectual Property Agreement                             | 4/30/2007                           | \$0                           |
| NA                                       | Carestream Health                       | Service Agreement  | 1/1/2010                            | \$0                           |
| NA                                       | Carestream Health                       | Tolling Agreement for Imaging Loops-Colorado & Oregon                        | 5/1/2007                            | \$0                           |
| NA                                       | Onex Health Care Holdings, Inc.         | Asset Purchase Agreement   | 1/9/2007                            | \$0                           |
| NA                                       | Carestream Health, Inc.                 | Amended & Restated Trademark License Agreement                               | 12/29/2009                          | \$0                           |
| NA                                       | Carestream Health, Inc.                 | Asset Purchase Agreement   | 4/30/2007                           | \$0                           |
| NA                                       | Carestream Health, Inc.                 | Real Property Lease Agreement (relating to Rochester Parking Lot D sublease) | n/a                                 | \$0                           |
| NA                                       | Carestream Health                       | Technical Services Agreement   | 4/30/2007                           | \$0                           |
| NA                                       | Carestream Health                       | Sanitary and   | 4/30/2007                           | \$0                           |

|    |                         |  |           |     |
|----|-------------------------|--|-----------|-----|
|    |                         | Industrial Sewer Agreement                                   |           |     |
| NA | Carestream Health       | Diagnostic Films & Emulsion, Photo Chemical Supply Agreement | 5/1/2007  | \$0 |
| NA | Carestream Health Inc.  | Irrigation Water Agreement                                   | 4/30/2010 | \$0 |
| NA | Carestream Health, Inc. | Site Maintenance Agreement                                   | 4/25/2007 | \$0 |

**Exhibit 2**

**Rejected Contracts**

| <b><u>IP Manager File<br/>Number</u></b> | <b><u>Contract<br/>Counterparty</u></b> | <b><u>Contract</u></b>        | <b><u>Date of Agreement</u></b> |
|--|---|-------------------------------|---------------------------------|
| NA                                       | Carestream Health                       | Tolling Agreement –<br>Oregon | 5/1/2007                        |

**EXHIBIT 3**

**Assigned Contracts**

| <b><u>Contract Counterparty</u></b>      | <b><u>Contract</u></b>   | <b><u>Date of Agreement</u></b> |
|--|--|---------------------------------|
| Carestream Health Inc.                   | Materials Supply Agreement   | 10/30/2009                      |
| Carestream Health Australia Pty Ltd      | End User License Agreement with Eastman Kodak Company for Kodak Capture Desktop Software                                 | 6/20/2011                       |
| Carestream Health Australia Pty Ltd      | End User License Agreement with Eastman Kodak Company for Kodak Capture Desktop Software for Kodak Capture Software LITE | 7/7/2011                        |
| Carestream Health                        | Kodak Capture Pro Software   | 6/29/2009                       |
| Carestream Health                        | End User License Agreement with Eastman Kodak Company for Kodak Capture Software LITE                                    | 4/9/2008                        |
| Carestream Health, Inc.                  | Utility Services Agreement (Rochester)   | 4/30/2007                       |
| Carestream Health, Inc.                  | Fire Protection Water Services Agreement   | 4/30/2007                       |
| Carestream Health, Inc., City of Greeley | Assignment and Amendment to Water Agreement  | 4/30/2007                       |
| Carestream Health, Inc.                  | Assignment Agreement - Fort Collins Raw Water Agreement  | 4/30/2007                       |