

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.**

**FIFTH REPORT OF MSI SPERGEL INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

May 18, 2022

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I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“**Medifocus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**MSI**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI (the “**NOI Proceedings**”).
2. On October 7, 2021, the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order (the “**Initial Order**”), among other things,
 - (a) converting the NOI Proceedings into proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in order to allow for the completion of its restructuring process under the CCAA and providing the Company with a stay of proceedings through to and including January 7, 2022 (the “**Stay Period**”);
 - (b) terminating MSI’s appointment as Proposal Trustee and appointing MSI as Monitor of the Company under the CCAA proceedings (in such capacity, the “**Monitor**”);
 - (c) approving the Sale Process and the Stalking Horse Agreement (each as defined in the Initial Order);
 - (d) approving the Administration Charge (as defined in the Initial Order) to secure payment of the fees and expenses of the Monitor, the Monitor’s Counsel and counsel to the Company; and

- (e) approving interim financing and the DIP Lender's Charge (as defined in the Initial Order).
3. A copy of the Initial Order is attached hereto as **Appendix "A"**.
 4. The Monitor engaged Aird & Berlis LLP as its independent legal counsel (the "**Monitor's Counsel**").
 5. Further details regarding the Company and background leading up to the Filing Date as well as updates on the steps taken by the Company and the Monitor since the Filing Date can be found in the First Report of the Proposal Trustee (and the Proposed Monitor) dated October 5, 2021 (the "**First Report**"), the Second Report of the Monitor dated January 4, 2022 (the "**Second Report**") and the Third Report of the Monitor dated February 3, 2022 (the "**Third Report**"), respectively.
 6. The Initial Order approved the Sale Process which included a transaction contemplated by the Stalking Horse Agreement between the Company, as vendor, and Asset Profits Limited and/or its permitted assignee, as purchaser ("**APL**" or the "**Stalking Horse Bidder**"). The Monitor administered all aspects of the Sale Process with assistance from the Company.
 7. On January 7, 2022, the Honourable Justice McEwen granted an Order (the "**First Stay Extension Order**") further extending the Stay Period up to and including February 8, 2022 to permit the Company and the Stalking Horse Bidder to conclude the Sale Process. A copy of the First Stay Extension Order is attached hereto as **Appendix "B"**.
 8. The Third Report provided details of the Reorganization Transaction to be

undertaken by the Company. The salient terms of the Reorganization Transaction are as follows:

- (a) all of the liabilities of Medifocus other than the Assumed Liabilities (as defined in the Third Report) shall be transferred to and vested in ResidualCo;
- (b) Medifocus shall apply to the Ontario Securities Commission (“**OSC**”) for a partial lifting of the Cease Trade Order in accordance with the *Securities Act* (Ontario), R.S.O. 1990, c. S5;
- (c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common shares that are issued pursuant to paragraph 30 (d) herein); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo (defined below);
- (d) the assets and regulatory approvals will remain with Medifocus, unaffected by the transaction;
- (e) APL (the “**Purchaser**”) or its permitted assignee (the “**Assignee**” and together with the Purchaser, “**PurchaseCo**”), as the case may be, shall subscribe for new shares of Medifocus to be paid by way of a credit bid of the secured indebtedness of the Purchaser (APL), existing as at the Filing Date, via private placement to be coordinated with the Toronto Stock Exchange;
- (f) all equity interests, compensation plans and other securities in Medifocus, other than PurchaseCo’s equity interest, shall be

cancelled for no consideration such that PurchaseCo becomes the sole shareholder of Medifocus; and

- (g) Medifocus shall apply to the OSC to cease to be a reporting issuer, including full revocation of the Cease Trade Order,

(the “**Reorganization Transaction**”).

- 9. On February 8, 2022, the Honourable Justice Conway granted an Order (the “**Reverse Vesting and Approval Order**”) approving, amongst other things, the Reorganization Transaction and extending the Stay Period up to and including March 15, 2022 to permit the Company and the Purchaser to complete the Reorganization Transaction. A copy of the Reverse Vesting and Approval Order is attached hereto as **Appendix “C”**.
- 10. On March 14, 2022, the Honourable Justice Cavanagh granted an Order (the “**Third Stay Extension Order**”) further extending the Stay Period up to and including May 20, 2022 to permit the Company and the Stalking Horse Bidder to conclude the Sale Process. A copy of the Third Stay Extension Order is attached hereto as **Appendix “D”**.
- 11. All Court materials filed in these proceedings can be found on MSI’s Case Website at: <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
- 12. For the Court’s ease of reference on the within Motion, copies of the First Report, the Second Report, the Third Report and the Fourth Report (as defined herein) of the Monitor (without Appendices) are attached hereto as **Appendices “E”, “F”, “G” and “H”**, respectively.

II. PURPOSE OF THIS REPORT AND DISCLAIMER

13. The purpose of this fifth report (the “**Fifth Report**”) is to provide the Court with information pertaining to:
- (a) the Monitor’s activities and general updates since its Fourth Report dated March 11, 2022 (the “**Fourth Report**”);
 - (b) the Monitor’s comments and report on the Company’s updated cash flow projection for the period to and including August 15, 2022 (the “**Updated Cash Flow Projection**”); and
 - (c) extending the Stay Period (as defined in the Initial Order) to and including August 15, 2022.

Restrictions and Disclaimer

14. In preparing this Fifth Report, the Monitor has relied upon certain financial information, books and records and discussions with the Company’s management (“**Management**”) and its legal counsel (the “**Information**”).
15. Although the Monitor has reviewed this Information for reasonableness, the Monitor has not performed an audit or verification of such Information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such Information.
16. The Monitor also bases its report on the cash flow projections provided by the Company and its Management. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been

performed. These cash flow projections contain reference to future events and are based on Management's assumptions and conditions that may not be ascertainable, actual results will vary from the projections, and such variations could be material and, accordingly, these assumptions may not remain valid throughout the period of the projections. Consequently, the reader is cautioned that they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods.

17. This Fifth Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this Fifth Report.
18. Parties using this Fifth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
19. This Fifth Report should be read in conjunction with the Affidavit of Raymond Tong sworn May 17, 2022 as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.
20. Unless otherwise specified, all currency references in this Fifth Report are

in Canadian dollars.

III. BACKGROUND AND APPOINTMENT

21. Medifocus is a Canadian-owned, public biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
22. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., and conducts business and holds patents across several jurisdictions, including many Asian countries.
23. Prior to the Filing Date, Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.
24. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
25. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the "**Asia Approvals**"). The Company advises that this approval

process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.

26. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
27. Medifocus therefore faced a liquidity crisis and mounting debt obligations which limited the development of the treatment pipeline. In response, as set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, which NOI Proceedings were subsequently converted under the CCAA.
28. The Company is now seeking a further extension to the Stay Period and the relief noted in paragraph 13 of this Fifth Report in order to complete the Reorganization Transaction prior to concluding these CCAA proceedings.

IV. EXTENSION OF STAY PERIOD AND CASH FLOW FORECAST

29. The current stay of proceedings will expire on May 20, 2022. Medifocus is seeking an 86-day extension up to and including August 15, 2022.
30. The Company has prepared the Updated Cash Flow Projection for the period to and including August 15, 2022. The Updated Cash Flow

Projection and the Company's statutory report on the Updated Cash Flow Forecast pursuant to Section 10(2)(b) of the CCAA are provided in **Appendices "I" and "J"**, respectively.

31. The Monitor has reviewed the Updated Cash Flow Projection, which indicates that the Company will start generating sales in July 2022. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court and advances by the Purchaser.
32. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor's statutory report on the cash flow is attached hereto at **Appendix "K"**.
33. The Monitor supports the Company's request for the stay extension for the following reasons:
 - (a) the Company will not be able to complete the Reorganization Transaction before the expiry of the current Stay Period, on May 20, 2022;
 - (b) following the approval of the Reorganization Transaction, the Purchaser requested that, post-closing, Medifocus be re-domiciled as a United States corporation. This request affected Medifocus' application to the OSC to lift the Cease Trade Order, and required that the terms of the re-domicile be completed before Medifocus could apply to the OSC. Between late March and May 9, 2022, Medifocus and the Purchaser, with the assistance of counsel, solidified the terms of post-closing/re-domicile matters (mostly taxation related) required before completing the OSC application;

- (c) on May 9, 2022 Medifocus applied to the OSC to lift the Cease Trade Order to facilitate the Purchaser's subscription for Medifocus shares. Medifocus has not yet received a response and does not expect one before the expiry of the current Stay Period ending on May 20, 2022;
- (d) Medifocus has kept the Monitor apprised of the status of the steps it has taken to advance closing of the Transaction;
- (e) the Company is acting in good faith and with due diligence;
- (f) it is the Monitor's view that the extension of the Stay Period will not materially prejudice any group of creditors; and
- (g) the Reorganization Transaction, if completed, will yield the greatest recovery for the Company's creditors and its stakeholders.

V. ACTIVITIES OF THE COMPANY AND THE MONITOR

Overview of Activities since the Third Report

- 34. Since the Fourth Report, the Company, and its counsel, have, among other things:
 - (a) communicated with the Monitor and its legal counsel on various matters in connection with the CCAA proceedings;
 - (b) engaged with the Purchaser with respect to completion of the Reorganization Transaction; and
 - (c) worked with the Monitor to prepare the Updated Cash Flow

Projection.

35. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:

- (a) maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
- (b) on-going monitoring of the Company's cash flows and for ongoing reporting of variances;
- (c) assisting the Company with preparing the Updated Cash Flow Projection;
- (d) meeting and corresponding with the Company and its legal counsel regarding the Updated Cash Flow Projection, cash management, supplier issues and various other matters in connection with the Company's operations and its CCAA proceedings;
- (e) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings; and
- (f) reviewing materials filed with the Court in respect of the CCAA proceedings, and this Motion with respect to the requested relief.

VI. CONCLUSION AND RECOMMENDATIONS

36. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order, *inter alia*:

- (a) further extending the Stay Period to August 15, 2022.

Dated at Toronto this 18th day of May, 2022

msi Spergel inc.

in its capacity as Monitor of Medifocus Inc.
and not in its personal or corporate capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR)	THURSDAY, THE 7 TH
)	
JUSTICE CAVANAGH)	DAY OF OCTOBER, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **MEDIFOCUS INC.** (the “**Applicant**”)

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day by video conference due to the COVID-19 crisis.

ON READING the affidavit of Raymond Tong, sworn October 4, 2021, and the Exhibits thereto (the “**Tong Affidavit**”), the First Report, dated October 5, 2021 (the “**First Report**”), of MSI Spergel Inc. (“**Spergel**”) in its capacity as proposal trustee (the “**Proposal Trustee**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and the Proposal Trustee, as well as any person listed on the counsel slip and on reading the consent of Spergel to act as the monitor (the “**Monitor**”),

SERVICE

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

CONTINUANCE UNDER THE CCAA

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

3. **THIS COURT ORDERS AND DECLARES** that effective October 7, 2021, the Applicant's proposal proceedings (the "**Proposal Proceedings**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (as amended) (the "**BIA**") are hereby taken up and continued under the CCAA and that, as of such date, the provisions of Part III of the BIA shall have no further application to the Applicant, save that any and all steps, agreements and procedures validly taken, done or entered into by the Applicant and all Orders granted during the Proposal Proceedings shall remain valid and binding, notwithstanding the commencement of the CCAA proceedings. For greater certainty, in the event of a conflict between an Order granted during the Proposal Proceedings and this Order, this Order shall govern.

4. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to take all necessary steps in furtherance of its discharge as Proposal Trustee in the Proposal Proceedings, including the taxation of its fees and disbursements and those of its counsel.

PLAN OF ARRANGEMENT

5. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

6. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Tong Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System

without any liability in respect thereof to any Person (as defined herein) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

8. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

10. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

11. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

14. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

15. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer,

the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

16. **THIS COURT ORDERS** that until and including January 7, 2022, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any

business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier

or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that Spigel is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant

and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in their preparation of the Applicant's cash flow statements;
- (d) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed by the Applicant and the DIP Lender;
- (e) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, to the extent otherwise agreed to by the Applicant and the DIP Lender;

- (f) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (i) carry out the Sales Process (as defined herein) and to take such steps and do all things the Monitor reasonably deems necessary to perform its obligations thereunder and to take such steps and execute such documentation as the Monitor may deem necessary or incidental to the Sales Process;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis.

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

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

DIP FINANCING

31. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a loan from Asset Profits Limited (the “**DIP Lender**”) in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$700,000 unless permitted by further Order of this Court.

32. **THIS COURT ORDERS THAT** such loan shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of September 27, 2021 (the “**Commitment Letter**”), filed.

33. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property of the Applicant, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

37. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$200,000);

Second – DIP Lender's Charge (to the maximum amount of \$700,000).

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any further Encumbrances over any Property that rank in priority to, or *pari passu* with the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

41. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the applicable Charges (the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the Applicant entering into the Commitment Letter, the creation of the DIP Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the granting of the Charges, the Commitment Letter or the Definitive Documents, and the granting of DIP Charge, do not and will not constitute preferences, fraudulent conveyances,

transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SALE PROCESS

43. **THIS COURT ORDERS** that the Sale Process attached as Schedule "A" to this Order is hereby approved (the "**Sale Process**").

44. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sale Process, provided that any definitive agreement to be executed by the Applicant in respect of the sale of all or part of the assets, rights, undertakings and properties of the Applicant, of every nature and kind whatsoever, and wherever situated, including all proceeds thereof shall require further approval of the Court.

45. **THIS COURT ORDERS** that the Applicant and the Monitor are authorized and directed to enter into the stalking horse asset purchase agreement dated October 5, 2021 (the "**Stalking Horse Agreement**") between the Applicant and Asset Profits Limited (the "**Stalking Horse Bidder**"), and the Stalking Horse Agreement is hereby approved and accepted for the purpose of conducting the Sale Process.

46. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of assisting the Applicant with the carrying out of the Sale Process or the provisions of this Order, save and except for gross negligence or willful misconduct on its part.

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://www.spergelcorporate.ca/engagements/medifocus-inc/>>’.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

50. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

51. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

53. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

55. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Digitally signed by
Mr. Justice Cavanagh

Sale and Investment Process

Background

1. On September 8, 2021, Medifocus Inc. (the “**Company**”) obtained protection from their creditors under the *Bankruptcy and Insolvency Act* (the “**BIA**”) and filed a notice of intention to make a proposal pursuant to the terms of the BIA.
2. msi Spergel Inc. was appointed as proposal trustee during the BIA proceedings.
3. It is anticipated that, on or about October 7, 2021, the Company will obtain an initial order granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) continuing the BIA proposal proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) and appointing msi Spergel Inc. as the monitor in the CCAA proceedings (in such capacity, the “**Monitor**”).
4. It is anticipated that, concurrently with the conversion to CCAA proceedings, the Company will apply to the Court to approve the sale and investment solicitation process (the “**Sale Process**”) described herein (the “**Process Approval Order**”). It is further anticipated that the Process Approval Order will also authorize the Company to enter into a fully binding and conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) between the Company and Assets Profits Limited (the “**Stalking Horse Purchaser**”) pursuant to which the Stalking Horse Purchaser will make an offer to purchase substantially all of the assets of the Company.
5. The Company, with the assistance of the Monitor, will conduct the Sale Process described herein under the supervision of the Monitor. Under the Sale Process, all qualified interested parties will be provided with an opportunity to participate in the Sale Process. The Sale Process is intended to continue the pre-filing efforts of the Company in soliciting interest in the property, assets and undertakings (collectively, the “**Assets**”) of the Company (the “**Transaction**”).
6. The purpose of this Sale Process is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Company in a formal marketing process supervised by the Monitor and approved by the Court. For the purposes of this Sale Process, a “**Superior Offer**” shall mean:
 - (a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
 - (b) an offer that provides for cash consideration of the Purchase Price (as defined herein) and: (i) a reimbursement of the Stalking Horse Purchaser’s reasonable fees and disbursements relating to the preparation and execution of the Stalking Horse Agreement in the maximum amount of \$25,000; and (ii) an incremental amount over and above the Purchase Price in the Stalking Horse Agreement in the amount of \$10,000.

7. The Sale Process, and any other orders of the Court made in the CCAA proceedings relating to the Sale Process, shall exclusively govern the process for soliciting and selecting bids for the sale of the Assets or investment in the Company, free and clear of any and all liabilities and encumbrances.

8. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day (a “**Business Day**” is any day, other than a Saturday or Sunday, on which banks are ordinarily open for business in Toronto, Ontario).

Timeline

9. The following table sets out the key milestones under the Sale Process:

Milestones	Deadline
Sale Process Commencement	Within five (5) calendar days after the Sale Process is approved by the Court
Bid Deadline and submission of Binding Asset Purchase/Investment Agreement (“ APA ”) with a comparison to the Stalking Horse Bid.	November 22, 2021
Sale Approval Motion	To be determined by the Monitor
Closing Date	Within ten (10) Business Days of the Court Approval of the Transaction

10. Subject to the terms contained herein and any order of the Court, the dates set out in the Sale Process may be extended by the Monitor, in its sole discretion, acting reasonably, all with a view to completing a fair and reasonable sale or investment in the Company.

Publication Notice

11. Within five (5) calendar days of the Sale Process being approved by the Court, the Monitor shall publish notice of this Sale Process in any publications considered appropriate by the Company and the Monitor.

Solicitation of Interest

12. As soon as reasonably practicable, the Monitor will prepare an initial offering summary (the “**Teaser Letter**”) notifying prospective purchasers of the existence of the Sale Process and inviting prospective purchasers to express their interest in making an offer in respect of the Assets pursuant to the terms of the Sale Process.

Free of Any and all Claims and Interests

13. Depending on the structure of the Transaction proposed by a Qualified Bidder (as defined herein), (a) all of the Assets of the Company can be transferred free and clear of all liens and claims, subject to any permitted encumbrances, pursuant to an approval and vesting order issued by the Court approving the Transaction (the “**Approval and Vesting Order**”) or (b) the shares of the Company (the “**Shares**”) can be sold and all of the liabilities of the Company vested out pursuant to a Reverse Vesting Order (“**RVO**”). For greater certainty, liens and claims will be discharged and any security interest will only attach to the net proceeds of such Transaction following the granting of the Approval and Vesting Order or the RVO, as applicable.

“As Is, Where Is”

14. Any purchase of the Assets, Shares or an investment in the Company will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Company, or any of their respective directors, officers, partners, employees, agents, advisors or estates, except to the extent as may be set forth in a Binding APA (as defined herein) and approved by the Court. By submitting a bid, each Potential Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Company and its Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Company’s Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties or guarantees, express, implied, statutory or otherwise, regarding the Company or its Assets or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA and approved by the Court.

Participation Requirements

15. Each person who wishes to participate in the Sale Process, (a “**Potential Bidder**”) must deliver an executed non-disclosure agreement (“**NDA**”), in the form attached herein as Schedule “A”, to the Monitor prior to the distribution of any confidential information as follows: Attn: Mukul Manchanda, mmanchanda@spergel.ca.

16. If it is determined by the Monitor with the assistance of the Company, in its sole discretion, that a Potential Bidder: (i) has a *bona fide* interest in pursuing a Transaction; and (ii) has delivered an executed NDA, then such Potential Bidder will be deemed to be a “**Qualified Bidder**”.

17. The Company will prepare, with the assistance of the Monitor, and send to each Qualified Bidder, as soon as reasonably practicable, a confidential information memorandum,

which will provide, among other things, information considered relevant to the Sale Process.

Due Diligence

18. The Monitor with the assistance of the Company, subject to competitive and other business considerations, may give each Qualified Bidder such access to due diligence materials and information relating to the Company as the Company deems appropriate, in its sole discretion. Due diligence access may include access to an electronic data room (a “**Data Room**”), on-site inspections and other matters which a Qualified Bidder may reasonably request and as to which the Company may agree. Neither the Company, the Monitor nor any of their representatives will be obligated to furnish any information relating to the Company to any person, in their discretion. The Company and the Monitor make no representation or warranty, express or implied, as to the information provided through this due diligence process or otherwise, except as may be set forth in a Binding APA with the Successful Bidder (as defined herein).

Bid Deadline

19. A Qualified Bidder that desires to make a bid shall deliver written copies of its bid, in the form of the template APA located in the Data Room, together with a blackline outlining all changes made to the APA (a “**Binding APA**”), to the Monitor as follows: Attn: Mukul Manchanda, mmanchanda@spergel.ca, so as to be received by no later than November 26, 2021 at 5:00 p.m. (ET) (as may be extended as set out below, the “**Bid Deadline**”). The Company, in consultation with the Monitor, may extend the Bid Deadline, once or successively, but is not obligated to do so. If the Bid Deadline is extended, the Company will promptly notify all Qualified Bidders.

Binding APA

20. A Binding APA must comply with all of the following:

- (a) the bid (either individually or in combination with other bids that make up one Binding APA) is an offer to purchase some or all of the Assets or Shares on terms and conditions acceptable to the Company, and the Monitor and delivered to the Company and the Monitor prior to the Bid Deadline;
- (b) it is duly authorized and executed, and includes a purchase price for the Assets/Shares expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits, schedules and all applicable ancillary agreements thereto;
- (c) includes a letter of acknowledgment stating that the Qualified Bidder’s offer is irrevocable and open for acceptance until the Successful APA is selected by the Company;
- (d) it is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Monitor, in its sole discretion, of the ability of the Qualified Bidder to consummate the proposed Transaction, and that will allow the Company and the Monitor to make a determination as to the Qualified Bidder’s financial and other capabilities to consummate the proposed sale and pay the Purchase Price;

- (e) it fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring, financing, participating or benefiting from such bid;
- (f) it includes an acknowledgement and representation of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets/Shares and the Company prior to making its bid, (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets, the Company or the completeness of any information provided in connection therewith;
- (g) it includes evidence, in form and substance reasonably satisfactory to the Company, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Binding APA submitted by the Qualified Bidder;
- (h) provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**");
- (i) it is received by the Monitor by the Bid Deadline; and,
- (j) the bid contemplates closing the transaction set out therein within 10 Business Days of the Approval and Vesting Order or the RVO (the "**Closing Date**").

21. The Monitor with the consent of the Company may determine whether to entertain bids for the Assets/Shares that do not conform to one or more of the requirements specified herein.

22. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Binding APA.

Evaluation of Binding APA

23. Each submitted Binding APA will be considered by the Company and the Monitor based upon several factors including, without limitation, items such as the Purchase Price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, the Assets/Shares included or excluded from the bid, the transition services required from the Company (if any), any related transaction costs, the likelihood and timing of consummating such transactions, whether the Transaction results in a Superior Offer, and such other matters as the Monitor determines in its sole discretion.

24. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Company or the Monitor regarding the Qualified Bidder or the Binding APA. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Company to reject a Binding APA.

Selection of Successful APA

25. The Company and the Monitor will review and evaluate each Binding APA and: (i) the Company with the consent of the Monitor may identify the highest or otherwise best offer for the Assets/Shares (the “**Successful Bid**”), or (ii) if no Binding APAs, other than the Stalking Horse Agreement, have been received by the Bid Deadline, then the Company shall declare the Stalking Horse Agreement as the Successful Bid.

26. Notwithstanding the foregoing, a Binding APA may not be withdrawn, modified or amended without the written consent of the Company or the Monitor prior to the Successful Bid being determined. Any such withdrawal, modification or amendment made without the written consent of the Monitor prior to the Successful Bid being determined shall result in the forfeiture of such Qualified Bidder’s Deposit as liquidated damages and not as a penalty.

27. In the event a Binding APA is not selected as a Successful Bid, the Deposit (without interest) shall be returned to the Qualified Bidder as soon as reasonably practicable.

Sale Approval Motion Hearing

28. The motion for an order of the Court approving any Successful Bid (the “**Sale Approval Motion**”) shall be determined by the Company and its advisors. The Sale Approval Motion shall be heard on a date determined by the Company and its advisors and subject to the Court’s availability.

29. All of the Binding APAs other than the Successful Bid, if any, shall be deemed rejected by the Company on and as of the date of closing of the Transaction contemplated by the Successful Bid.

Reservation of Rights

30. The Monitor with the consent of the Company, may: (a) determine which Binding APA, if any, is the highest or otherwise best offer; (b) notwithstanding anything contained herein, reject any bid that is (i) inadequate or insufficient as determined by the Company and the Monitor, in their sole discretion, (ii) not in conformity with the requirements of the Sale Process or any order of the Court, or (iii) contrary to the best interests of the Company as determined by the Company and the Monitor in their sole discretion, and (c) may modify the Sale Process or impose additional terms and conditions on the sale of the Assets/Shares at any time in its sole discretion.

Miscellaneous

31. This Sale Process is solely for the benefit of the Company and nothing this Sale Process shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise).

32. The Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Sale Process.

Limitation of Liability

33. The Monitor and the Company shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder or Qualified Bidder, or any creditor or other stakeholder, for any act or omission related to this Sale Process.

Schedule “A”

Form of Non-Disclosure Agreement

Court File No. CV-21-00669781-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **MEDIFOCUS INC.** (the “**Applicant**”)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

INITIAL ORDER

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Lawyers for Medifocus Inc.

APPENDIX “B”

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

THE HONOURABLE MR

)

FRIDAY, THE 7th DAY OF

JUSTICE MCEWEN

)

JANUARY, 2022

)

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC. (the "Applicant")

STAY EXTENSION ORDER

THIS MOTION, made by the Applicant, Medifocus Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order extending the Stay Period (as hereinafter defined) was heard this day by judicial videoconference due to the COVID-19 emergency.

ON READING the motion record of the Applicant, including the affidavit of Raymond Tong, sworn December 30, 2021, and the exhibits thereto (the "**Tong Affidavit**"), and the second report of msi Spergel Inc. in its capacity as monitor of the Applicant (the "**Monitor**"), dated January 4, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and all persons present as stated on the counsel slip, no one appearing for any other



person although properly served as appears from the affidavit of Christel Paul sworn December 31, 2021:

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

2. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order of Mr. Justice Cavanagh dated October 7, 2021 (the “**Stay Period**”), is hereby extended up to and including February 8, 2022.

3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor, the Applicant and their respective agents in carrying out the terms of this Order.

4. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order and is enforceable without any need for entry and filing.



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.

Applicant

7 Jan 22

Order to go as per the draft filed and signed.
There is no opposition and the Monitor supports the relief sought.
The extension is fair and reasonable and there is sufficient liquidity.

McE T.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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Lawyers for Medifocus Inc.

APPENDIX “C”

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

THE HONOURABLE MADAM)	TUESDAY, THE 8TH DAY OF
)	
JUSTICE CONWAY)	FEBRUARY, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC. (the “**Applicant**”)

**(RE TRANSACTION APPROVAL, REVERSE VESTING ORDER, STAY
EXTENSION, MONITOR’S APPROVALS, AND CCAA TERMINATION)**

THIS MOTION, made by the Applicant, Medifocus Inc. (“**Medifocus**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order *inter alia* (i) declaring that 1000101532 Ontario Inc. (“**ResidualCo**”) is a company to which the CCAA applies; (ii) adding ResidualCo as an Applicant in these CCAA proceedings; (iii) approving the reorganization transaction steps contemplated in paragraph 6 herein; (iv) extending the Stay Period (as defined below) until and including March 15, 2022; (v) approving the fees and activities of msi Spergel Inc. in its capacity as monitor (the “**Monitor**”) and its counsel; and (vi) terminating these CCAA proceedings following the filing of the Monitor’s Certificate (defined below), was heard this day by judicial videoconference over Zoom.

ON READING the motion record of the Applicant, including the affidavit of Raymond Tong, sworn February 2, 2022, and the exhibits thereto (the “**Tong Affidavit**”), the affidavit of

Raymond Tong, sworn February 7, 2022, and the exhibits thereto and the Third Report of msi Spergel Inc. (“**MSI**”) in its capacity as monitor of the Applicant (the “**Monitor**”), dated February 3, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and all persons present as stated on the counsel slip, no one appearing for any other person although properly served as appears from the affidavits of Shaun Parsons sworn February 4, 2022 and February 7, 2022:

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

CCAA APPLICANT

2. **THIS COURT ORDERS AND DECLARES** that ResidualCo shall be a company to which the CCAA applies.

3. **THIS COURT ORDERS** that ResidualCo shall be added as an applicant in these CCAA proceedings and all references in any Order of this Court in respect of this CCAA proceeding to an “Applicant” or “Applicants” shall refer to and include ResidualCo.

4. **THIS COURT ORDERS** that the title of these proceedings is hereby changed to:

IN THE MATTER OF THE COMPANIES’ CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF
MEDIFOCUS INC. AND 1000101532 ONTARIO INC.

5. **THIS COURT ORDERS** that any document filed hereafter in these CCAA proceedings shall be filed using the revised title of proceedings.

REORGANIZATION TRANSACTION

6. **THIS COURT ORDERS AND DECLARES** that the reorganization transaction contemplated in this paragraph is hereby approved and the Applicants and their successors (including ResidualCo) are authorized to implement and complete the reorganization contemplated below:

- (a) all of the Liabilities (as defined below) of Medifocus other than the Assumed Liabilities (as defined in Schedule “A” hereto) shall be transferred to and vested in ResidualCo;
- (b) Medifocus shall apply to the Ontario Securities Commission (“**OSC**”) for a partial lifting of the Cease Trade Order in accordance with the *Securities Act* (Ontario), R.S.O. 1990, c. S5;
- (c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common Shares that are issued pursuant to section 6(d) herein); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo (defined below);
- (d) Asset Profits Limited (the “**Purchaser**”) or its permitted assignee (the “**Assignee**” and together with the Purchaser, “**PurchaseCo**”), as the case may be, shall subscribe for new shares of Medifocus, to be paid by way of a credit bid of the secured indebtedness of the Purchaser, via private placement to be coordinated with the Toronto Stock Exchange;
- (e) all equity interests, compensation plans and other securities in Medifocus, other than PurchaseCo’s interest, shall be cancelled such that PurchaseCo becomes the sole shareholder of Medifocus; and
- (f) Medifocus shall apply to the OSC to cease to be a reporting issuer, including full revocation of the Cease Trade Order;

(the “**Reorganization Transaction**”).

REVERSE VESTING ORDER

7. **THIS COURT ORDERS** that, other than the Assumed Liabilities, all claims, liabilities, debts, obligations, demands, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, and charges of any kind or nature

whatsoever whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, secured or unsecured, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise (collectively, the “**Liabilities**”) shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo and shall no longer be obligations of Medifocus, and Medifocus and all of its assets, licenses, undertakings, permits, approvals, and properties of every nature and kind whatsoever and wherever situate shall be and are hereby forever released and discharged from all of the Liabilities vesting in ResidualCo.

IMPLEMENTATION OF TRANSACTION

8. **THIS COURT ORDERS AND DECLARES** that upon consummation of the Reorganization Transaction, PurchaseCo shall be the sole shareholder of Medifocus and Medifocus shall be free and clear of and from any and all Liabilities other than Assumed Liabilities.

9. **THIS COURT ORDERS** that the Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Reorganization Transaction.

10. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Applicant to proceed with the Reorganization Transaction and that no shareholder or other approval shall be required in connection therewith.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants,

the entering into of the Reorganization Transaction and the transactions approved in this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue,

or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

EXTENSION OF THE STAY PERIOD

12. **THIS COURT ORDERS** that the stay period (the “**Stay Period**”) referred to in the Initial Order granted by the Honourable Justice Cavanagh, dated October 7, 2022, is extended until and including March 15, 2022.

DISCHARGE OF MONITOR AND TERMINATION OF CCAA

13. **THIS COURT ORDERS** that upon completion of any outstanding matters involving the Monitor as well as the completion of the Reorganization Transaction, the Monitor shall file a certificate substantially in the form attached hereto as Schedule “B” (the “**Monitor’s Certificate**”) notifying the Court of the completion of the Reorganization Transaction and the completion of all matters in these CCAA proceedings.

14. **THIS COURT ORDERS** that the Monitor may rely on written notice from Medifocus and PurchaseCo regarding the fulfilment of conditions to closing the Reorganization Transaction and shall have no liability with respect to delivery of the Monitor’s Certificate as it relates to such conditions.

15. **THIS COURT ORDERS** that the Monitor’s Certificate be and is hereby approved and directs the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after service thereof to the service list for these CCAA proceedings.

16. **THIS COURT ORDERS** that upon the delivery to the service list for these CCAA proceedings and filing with the Court a signed Monitor’s Certificate:

- (a) MSI shall be discharged as Monitor of the Applicants in these CCAA proceedings, and shall have no further duties, obligations, or responsibilities, as Monitor, from and after such time, save and except as contemplated under paragraph 17 of this Order;

- (b) the Administration Charge shall automatically be terminated, discharged, expunged, and released; and
- (c) these CCAA proceedings will be deemed terminated, including as against Medifocus, without further Order of this Court.

17. **THIS COURT ORDERS** that notwithstanding the discharge of the Monitor and the termination of these CCAA proceedings, upon the Monitor filing the Monitor's Certificate, this Court shall remain seized of any matter arising from these CCAA proceedings, and MSI shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA proceedings, notwithstanding the termination thereof. MSI, in its capacity as Monitor, is authorized to take such steps and actions as it deems necessary to address ancillary or incidental matters, following the termination of the CCAA proceedings, and in completing or addressing any such ancillary or incidental matters, MSI shall continue to have the benefit of all of the provisions of the CCAA and of all Orders made in these CCAA proceedings, in relation to its capacity as Monitor, including all approvals, protections, and stays of proceedings in favour of MSI, in its capacity as Monitor.

BANKRUPTCY OF RESIDUALCO

18. **THIS COURT ORDERS** that, as soon as practicable but prior to the filing of the Monitor's Certificate;

- (a) MSI is hereby authorized and directed to file an assignment in bankruptcy pursuant to the BIA for an on behalf of ResidualCo and to take any such steps incidental thereto;
- (b) MSI is hereby authorized and empowered, but not obligated, to act as trustee in bankruptcy in respect of ResidualCo under the BIA; and
- (c) MSI may apply funds received by the Applicant or PurchaseCo on account of any bankruptcy costs of ResidualCo against the Trustee's fees and disbursements incurred in connection with any such bankruptcy proceedings in respect of ResidualCo.

19. **THIS COURT ORDERS** that the costs of any bankruptcy of ResidualCo shall be paid by PurchaseCo, on behalf of Medifocus, to the Monitor, who shall provide same to the trustee in bankruptcy of ResidualCo (in such capacity, the “**Trustee**”), which costs shall be held by the Monitor and the Trustee free and clear of any Liabilities.

RELEASES

20. **THIS COURT ORDERS** that, upon the filing of the Monitor’s Certificate, (i) the Applicant’s current directors and officers and (ii) the Monitor, the Monitor’s legal counsel, legal counsel for the Applicant, and each of their respective affiliates, subsidiaries, partners, and successors (the “**Releasees**”) are hereby released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions and other recoveries on account of any liability, obligations, demand or cause of action of whatever nature, which any Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the date of the granting of this Order and all such claims shall be forever waived and released, except that nothing in this Order shall release any Releasee from liability for gross negligence, willful misconduct, or claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA.

21. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

APPROVAL OF THE MONITOR’S ACTIVITIES AND FEES

22. **THIS COURT ORDERS** that the First Report of the Monitor dated October 5, 2021, the Second Report of the Monitor dated January 4, 2022, and the Third Report of the Monitor (the “**Third Report**”) dated February 3, 2022, and the activities of the Monitor referred to therein are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with

respect to its own personal liability, will be entitled to rely upon or utilize in any way such approval.

23. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the fee affidavits attached to the Third Report, are hereby approved.

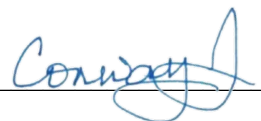
24. **THIS COURT ORDERS** that the Fee Accruals (as defined in the Third Report) of the Monitor and its counsel incurred in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA proceedings, is hereby approved without further Order of the Court.

GENERAL

25. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from 12:01 a.m. Eastern Standard/Daylight Time on the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

26. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Applicants, the Monitor, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.



Schedule "A"

"Assumed Liabilities" means:

- all Liabilities with respect to the assets of Medifocus that arise or are incurred from and after the delivery of the Monitor's Certificate; and
- the debtor in possession facility in the maximum amount of \$700,000 owed by Medifocus to Assets Profits Limited or its assignee.

Schedule “B”
Form of Monitor’s Certificate

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC. (“**Medifocus**”) AND
1000101532 ONTARIO INC. (“**ResidualCo**” and together with
Medifocus, the “**Applicants**”)

Applicants

CERTIFICATE OF THE MONITOR

RECITALS

1. Pursuant to the Initial Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List), dated October 7, 2021, Medifocus’ proposal proceeding under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, was converted into a proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and msi Spergel Inc. (“**MSI**”) was appointed as the monitor (“**Monitor**”) of Medifocus in the within proceedings (the “**CCAA Proceedings**”).
2. Pursuant to an Order of this Court dated February 8, 2022 (the “**Transaction Approval Order**”), among other things, the Court approved transactions or a corporate reorganization, and ordered, *inter alia* (i) a reverse vesting or transfer of certain liabilities to ResidualCo; and (ii) the implementation of a corporate reorganization pursuant to which Asset Profits Limited or its permitted assignee (“**PurchaseCo**”) subscribed for shares in Medifocus and all other shares in the capital of Medifocus were to be cancelled with the

effect that PurchaseCo shall be the sole shareholder of Medifocus (the “**Reorganization Transaction**”).

3. Pursuant to the Transaction Approval Order, this Monitor’s Certificate shall be served upon the service list in these CCAA Proceedings and filed with the Court upon the completion of the Reorganization Transaction to the satisfaction of the Monitor and the completion of any other outstanding matters involving the Monitor in the CCAA Proceedings.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from PurchaseCo and the Applicants, in form and substance satisfactory to the Monitor, that all conditions to closing the Reorganization Transaction have been satisfied.
2. In accordance with the terms of the Transaction Approval Order, PurchaseCo has:
 - (a) paid the costs, or provided the Monitor with sufficient funds, to cover the costs of the bankruptcy proceedings of ResidualCo, such funds to be provided to MSI in its capacity as trustee in bankruptcy of ResidualCo;
 - (b) confirmed to the Monitor that PurchaseCo has paid, assumed or otherwise satisfied the priority payables of Medifocus; and
 - (c) confirmed to the Monitor that all other matters to be attended to in connection with the Reorganization Transaction have been completed to the satisfaction of the Monitor, and the Reorganization Transaction has been fully consummated.
3. All other matters in these CCAA Proceedings involving the Monitor have been fully completed.
4. This Monitor’s certificate was delivered by the Monitor at _____ on _____, 2022.

**MSI SPERGEL INC., solely in its capacity as
Monitor of the Applicants, and not in its personal
or corporate capacity.**

Per: _____

Name: Mukul Manchanda
Title: Managing Partner, Corporate
Restructuring & Insolvency

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**TRANSACTION APPROVAL AND REVERSE
VESTING ORDER**

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Lawyers for Medifocus Inc.

APPENDIX “D”



Electronically issued
Délivré par voie électronique : 15-Mar-2022
Toronto

Court File No. CV-21-00669781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR

)

TUESDAY, THE 14TH DAY OF

JUSTICE CAVANAGH

)

MARCH, 2022

)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC AND 1000101532
ONTARIO INC.

(RE: STAY EXTENSION)

THIS MOTION, made by the Applicants, Medifocus Inc. and 1000101532 Ontario Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order *inter alia* extending the Stay Period (as defined below) until and including May 20, 2022; was heard this day by judicial videoconference over Zoom.

ON READING the motion record of the Applicants, including the affidavit of Raymond Tong, sworn March 11, 2022, and the exhibits thereto (the "**Tong Affidavit**"), and the Fourth Report (the "**Fourth Report**") of msi Spergel Inc. ("**MSI**") in its capacity as monitor of the Applicants (the "**Monitor**"), dated March 11, 2022, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and all persons present as stated on the counsel slip, no one appearing for any other person although properly served as appears from the affidavit of Shaun Parsons sworn March 11, 2022.

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

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the stay period (the “**Stay Period**”) referred to in the Initial Order granted by the Honourable Justice Cavanagh, dated October 7, 2021, is extended until and including May 20, 2022.

GENERAL

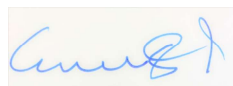
3. **THIS COURT ORDERS** that the Revised Fee Accruals (as defined in the Fourth Report) of the Monitor and its counsel incurred in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA proceedings, is hereby approved without further Order of the Court.

4. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from 12:01 a.m. Eastern Standard/Daylight Time on the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Applicants, the Monitor, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary

or desirable to recognize and give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.



Digitally signed by
Mr. Justice Cavanagh

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC. AND 1000101532 ONTARIO INC

COMMENCEMENT DE LA PROCÉDURE

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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Lawyers for Medifocus Inc. and 1000101532
Ontario Inc.

APPENDIX “E”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, RSC 1985, Cb-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF MEDIFOCUS INC. OF THE CITY OF
TORONTO OF THE PROVINCE OF ONTARIO**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.**

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF MEDIFOCUS INC.**

- AND -

**FIRST REPORT OF MSI SPERGEL INC. AS PROPOSED CCAA
MONITOR OF MEDIFOCUS INC.**

October 5, 2021

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- A. Certificate of Filing the Notice of Intention to Make a Proposal
- B. Cash Flow Forecast and Applicant's Statutory Report on Cash Flow

- C. Spergel's Statutory Report on the Cash Flow Forecast
- D. Proposed Sale Process
- E. Stalking Horse Agreement

I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“Medifocus” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and msi Spergel inc. (“**Spergel**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI. A copy of the Certificate of Filing issued by the Superintendent of Bankruptcy in respect of the Company’s NOI is attached hereto as **Appendix “A”**.
2. Spergel was previously retained by the Company to act as financial advisor to assist the Company’s management and its board of directors in reviewing restructuring alternatives available to the Company as part of its strategic review and planning.
3. The primary objectives of the Company’s NOI proceedings are to: (i) stabilize Company’s business, (ii) to restructure its business and affairs, including, but not limited to, reducing overhead costs, and (iii) to carry out the SISP (as defined herein).
4. The Company is now seeking an Order to, among other things, convert the NOI proceedings and continue its restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and to appoint Spergel as Monitor of Medifocus under the proposed CCAA proceedings (in such capacity, the “**Proposed Monitor**”).

II. PURPOSE OF THIS REPORT AND DISCLAIMER

5. The purpose of this first report (the “**First Report**”) is to provide the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) with information pertaining to the following:
- (a) a background information about the Company;
 - (b) the restructuring steps to be undertaken by the Company during these proceedings since the Filing Date;
 - (c) the activities of the Proposal Trustee since the Filing Date;
 - (d) the purpose and objective of the proposed conversion of the NOI proceeding to CCAA proceedings;
 - (e) Spergel’s qualification to act as monitor under the CCAA (the “**Monitor**”);
 - (f) the Company’s proposed interim financing facility (“**DIP Facility**”) extended by Asset Profits Limited (“**Asset Profits**”), as lender, to the Company pursuant to the terms of the DIP Term Sheet (as defined below) to fund the Company’s working capital requirements during these proceedings;
 - (g) the proposed Priority Charges over the Company’s property, assets and undertaking on account of (i) the Administration Charge (as defined below); and (iii) the DIP Lender’s Charge (as defined below);
 - (h) the Company’s request for an extension of the stay of proceedings

afforded under the CCAA (the “**Stay Period**”) to and including January 7, 2022;

- (i) the Company’s request for approval of a sales process to be conducted by the Company, with the supervision of the Monitor, and to enter into the stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) between the Company, as vendor, and a company owned and incorporated by the owners/directors of Asset Profits, the Company’s sole secured creditor (the **Stalking Horse Bidder**”); and
- (j) the Proposal Trustee’s recommendation that this Court make orders, as requested by the Company, *inter alia*:
 - i. approving the Administration Charge;
 - ii. approving the DIP Facility and the DIP Charge (as defined below); and
 - iii. approving the conversion of the NOI proceedings to proceedings under the CCAA.

Restrictions and Disclaimer

- 6. In preparing this First Report, the Proposal Trustee has relied upon certain information provided to it by the Company’s management. The Proposal Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Proposal Trustee expresses no opinion or other form of

assurance with respect to such information.

7. The cash flow forecast and projections in this First Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Proposal Trustee expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
8. This First Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Proposal Trustee. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Proposal Trustee has not endeavored to do so in this First Report.
9. Parties using this First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
10. This First Report should be read in conjunction with the Affidavit of Raymond Tong sworn October 4, 2021 (the "**Tong Affidavit**") as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.

11. Court materials in these proceedings can be found on Spergel's Case Website at <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
12. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

III. BACKGROUND AND APPOINTMENT

13. On September 8, 2021, the Company commenced these proceedings by filing an NOI with the Superintendent of Bankruptcy, and Spergel was appointed as the Proposal Trustee.
14. Medifocus is a Canadian-owned, publicly listed biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
15. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., but primarily operates in the United States out of a facility located at 10240 Old Columbia Road, Suite G, Maryland, 21046. The Company also conducts business and holds patents across several jurisdictions, including many Asian countries.
16. Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.

17. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
18. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the “**Asia Approvals**”). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
19. Medifocus has traditionally funded its operations through debt and equity offerings, as the sales of Prolieve were not sufficient to sustain on-going operations. As traditional lenders have been hesitant to fund products in the non-essential medical procedure space, capital funding has primarily come from private/non-traditional investors.
20. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
21. Medifocus therefore faced a liquidity crisis and mounting debt obligations which limited the development of the treatment pipeline. In response, as

set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, and Spergel was appointed as the Proposal Trustee.

IV. CASH FLOW FORECAST

22. The Company has prepared a Statement of Projected Cash Flow for the 13 weeks beginning September 3, 2021 and ending on November 26, 2021 (the “**Cash Flow Forecast**”). The Cash Flow Forecast and the Company’s statutory report on the cash flow pursuant to paragraph 50.4(2)(c) of the BIA which is same as the statutory report required pursuant to Section 10(2)(b) of the CCAA is attached as **Appendix “B”**.
23. The Proposal Trustee has reviewed the Cash Flow Forecast, which indicates no further sales and confirms the quantum of the DIP financing, as outlined later in this First Report, needed to maintain the liquidity to sustain operations until the Sales Process is completed.
24. Based on Spergel’s review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. Spergel’s statutory report on the Cash Flow Forecast pursuant to paragraph 50.4(2)(b) of the BIA which is same as the statutory report required pursuant to paragraph 23(1)(b) of the CCAA is attached as **Appendix “C”**.

V. PURPOSE AND OBJECTIVE OF THE PROPOSED CONVERSION TO CCAA PROCEEDINGS

25. The Company seeks to continue the NOI proceedings under the CCAA, pursuant to section 11.6, to maximize the value of its business while it runs the Sale Process (as defined below), on a going concern basis, for

the benefit of all stakeholders.

26. The Company would also benefit from the flexibility afforded under the CCAA, including the option to implement reverse vesting structures to preserve the value of the existing regulatory approvals attached to certain valuable contracts.
27. The Company proposes to commence a ‘stalking horse’ sale process (as described below), which will, among other things, permit the Company to:
 - (a) maximize the going-concern value for the Company’s property, assets and undertakings (the “**Assets**”) or the Company’s shares (the “**Shares**”) for the benefit of its stakeholders; and
 - (b) set a floor price for the value of the consideration to be obtained in such a sale process.
28. The time period for the Company to file a proposal under the NOI will expire on October 8, 2021. The Company will not be in a position to make a proposal by such date.
29. Accordingly, and in order to provide the time for the Sale Process described herein to be conducted and completed, the Company is seeking to convert the NOI proceedings to CCAA proceedings and to transition Spergel’s role from Proposal Trustee to Court-appointed Monitor.
30. The Company requires the continued stay of all proceedings and enforcement processes taken or that might be taken in respect of Medifocus, the Proposed Monitor, or their respective employees and representatives, and accordingly, the Company is seeking an initial Stay

Period under to and including January 7, 2022. This will provide the time necessary to fully and formally canvass the market for purchasers of the business as a going-concern through a court-supervised Sale Process.

31. Under the circumstances, a bankruptcy and liquidation would result in a worse outcome for the stakeholders of Medifocus than the sale transaction contemplated by the Stalking Horse Agreement.

VI. QUALIFICATIONS TO ACT AS MONITOR

32. Spergel is a licensed insolvency trustee within the meaning of section 2(1) of the BIA. In addition, Spergel is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.
33. Spergel has consented to act as Monitor in the proposed CCAA proceedings should the Court grant the Initial Order. A copy of Spergel's consent to act as Monitor is attached as Exhibit N to the Tong Affidavit.
34. Spergel has retained Aird & Berlis LLP ("**Aird**") to act as its independent legal counsel (the "**Monitor's Counsel**"). Aird has also been acting as counsel to Spergel in its capacity as Proposal Trustee in the NOI proceedings.
35. Prior to the Filing Date, Spergel was engaged to assist the Company to consider restructuring options and conduct certain financial analyses of its business. As a result of its engagement, Spergel acquired significant knowledge of Medifocus' business and operations, including the key issues and challenges presently facing the Company.
36. Neither Spergel nor any of its representatives or affiliates has been at any

time in the past two years: (a) a director, officer or employee of any member of the Company; (b) related to any member of the Company, or to any director or officer of any member of the Company; or (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any member of the Company.

VII. PROPOSED DIP FINANCING

37. The Proposed Monitor understands that the Company has secured a commitment of up to a maximum of \$700,000 in interim financing, which is to be used towards on-going operations, funding professional costs of these proceedings and the maintenance of Medifocus' licenses and patents, until the end of the proposed Stay Period.
38. The DIP financing is proposed to be provided by Asset Profits, as lender, the Company's sole existing secured lender. The Proposed Monitor understands that Asset Profits is not related to the Company as that term is defined under the BIA.
39. The material terms and features of the DIP facility, as outlined in the DIP Term Sheet, include
 - (a) a non-revolving credit facility in the principal amount of \$700,000;
 - (b) interest rate of 9% per annum;
 - (c) no commitment fees;
 - (d) a small fee to cover out of pocket expenses in preparing and entering into the DIP arrangement; and

- (e) security ranking ahead of all other creditors of the Company.
40. It is contemplated that Asset Profits would be granted a Court-ordered charge over substantially all of the Assets to secure amounts owing by the Company pursuant to the DIP Facility (the “**DIP Lender’s Charge**”). The DIP Lender’s Charge will rank in priority to all other charges and encumbrances other than the Administration Charge (as defined below).
41. The Proposed Monitor makes the following observations in respect of certain of the terms of the proposed DIP Facility:
- (a) the DIP Facility shall be available in advances consistent with the Cash Flow Forecast; and
 - (b) based on its experience and the information available to it, the Proposed Monitor is of the view that the interest rate provided in the DIP Term Sheet is not outside the range for similarly situated DIP facilities. Asset Profits has also agreed to forego a market standard commitment fee and other related standby availability fees.
42. Given the cash flow issues and difficult market space in which the Company operates, the Proposed Monitor is of the view that it would be difficult and impractical for the Company to obtain alternative interim financing on better commercial terms than are being offered by Asset Profits. Asset Profits is also the incumbent secured creditor, understands the business and it is unclear whether they would support their interest being primed.
43. As a result, the Proposed Monitor is of the view that the DIP Facility and the DIP Lender’s Charge are appropriate in the circumstances.

VIII. ADMINISTRATION CHARGE

44. The Company is seeking a charge in an amount not to exceed \$200,000 (the “**Administration Charge**”) to secure the fees and expenses of the Monitor, its counsel and the Company’ counsel for services rendered both leading up to and after the Filing Date.
45. The Administration Charge is a customary provision in an Initial Order in a CCAA proceeding. It is required by the professionals engaged to assist a debtor company in the CCAA proceedings and to protect them if the debtor is unable to pay professional fees and costs during the CCAA process. The Administration Charge is to rank first on the Assets.
46. The quantum of the Administration Charge sought by the Company was determined in consultation with the Proposal Trustee and having regard for the Cash Flow Forecast.

IX. PRIORITY CHARGES

47. The Administration Charge and DIP Lender’s Charge shall together be defined as the “Priority Charges”.
48. The Company proposes the Court-ordered charges have the following priority:
 - (a) First, the Administration Charge; and
 - (b) Second, the DIP Lender’s Charge.

X. PROPOSED SALE PROCESS

49. In order to provide third parties with an opportunity to consider an acquisition of the Company's Assets or Shares, the Company is proposing that the Proposed Monitor market the Company's Assets or Shares for sale for a period of approximately seven (7) weeks (the "**Sale Process**"). The Company has developed the Sale Process in consultation with the Proposed Monitor, a copy of which is appended as **Appendix "D"** to this First Report.
50. The Sale Process is designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Assets or Shares of the Company.
51. The Sale Process contemplates approval of a Stalking Horse Agreement between the Company, as vendor, and the Stalking Horse Bidder. Given the Stalking Horse Bidder is the sole secured creditor of the Company, it is contemplated that the Company, with the consent of the Proposed Monitor, will administer all aspects of the Sale Process.
52. The principal elements of the Sale Process are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Sale Process):
- (a) within five (5) calendar days of the Sale Process being approved by the Court, the Proposed Monitor shall publish notice of the Sale Process in any publications considered appropriate by the Company and the Proposed Monitor;
 - (b) as soon as is reasonably possible, the Monitor will prepare a

Teaser Letter notifying prospective purchasers of the existence of the Sale Process and inviting prospective purchasers to express their interest in making an offer in respect of the Assets or Shares pursuant to the terms of the Sale Process;

- (c) Potential Bidders that wish to commence due diligence will be required to execute a non-disclosure agreement (“**NDA**”);
- (d) Upon execution of the NDA, the Proposed Monitor, with the assistance of the Company, will determine if the Potential Bidder has a bona fide interest in pursuing a Transaction and thus deem them a “**Qualified Bidder**”;
- (e) The Company will prepare, with the assistance of the Monitor, a confidential information memorandum (“**CIM**”), which will provide, among other things, information considered relevant to the Sale Process. The CIM will be sent to each Qualified Bidder;
- (f) The Proposed Monitor, with the assistance of the Company, and subject to competitive and other business considerations, may give each Qualified Bidder access to due diligence materials and information relating to the Company that the Company deems appropriate, at its sole discretion;
- (g) Due diligence access may include access to an electronic data room (“**Data Room**”), on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Company may agree. Neither the Company nor the Proposed Monitor will be obligated to furnish any information relating to the Company or any person, at their discretion;

- (h) A Binding APA must be submitted in writing to the Proposed Monitor by no later than 5:00 p.m. (EST) on November 26, 2021 (**"Bid Deadline"**);
- (i) The Company, in consultation with the Proposed Monitor, may extend the Bid Deadline, once or successively, but is not obligated to do so. If the Bid Deadline is extended, the Company will promptly notify all Qualified Bidders;
- (j) A Binding APA must comply with all of the following:
 - i. The bid is an offer to purchase some or all of the Assets or Shares on terms and conditions acceptable to the Company and the Proposed Monitor and delivered to the Company and Proposed Monitor prior to the Bid Deadline;
 - ii. It is duly authorized and executed and includes a purchase price for the Assets/Shares expressed in Canadian dollars (the **"Purchase Price"**), together with all exhibits, schedules, and all applicable ancillary agreements thereto;
 - iii. Includes a letter of acknowledgement stating that the Qualified Bidder's offer is irrevocable and open for acceptance until a successful APA is selected by the Company;
 - iv. Is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Proposed Monitor, at its sole discretion, of the ability of the Qualified Bidder to consummate the proposed

Transaction and pay the Purchase Price;

- v. It fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring, financing, participating, or benefiting from such bid;
- vi. It includes an acknowledgement and representation from the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets/Shares and the Company prior to make its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, regarding the Assets, the Company, or the completeness of any information provided in connection therewith;
- vii. It includes evidence, in form and substance reasonably satisfactory to the Company, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Binding APA submitted by the Qualified Bidder;
- viii. Provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the **"Deposit"**);
- ix. It is received by the Proposed Monitor by the Bid Deadline; and

- x. The bid contemplates closing the transaction set out therein within 10 Business Days of the Approval and Vesting Order (“**AVO**”) or the Reverse Vesting Order (“**RVO**”) (the “**Closing Date**”).
- (k) A Binding APA will be considered if, among other criteria set out in the Sale Process, it meets the following minimum criteria:
 - i. It must be a Superior Offer, defined as: (i) a credible, reasonably certain and financially viable offer made by a Qualified Bidder to be a counterparty to a transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
 - ii. An offer that provides for cash consideration of the Purchase Price and provides for a reimbursement of the Stalking Horse Purchaser’s reasonable fees and expenses up to the maximum amount of \$25,000, and an incremental amount over and above the Purchase Price in the Stalking Horse Agreement in the amount of \$10,000.
- (l) The Company and the Proposed Monitor will review and evaluate each Binding APA and: (i) the Company with the consent of the Monitor may identify the highest or otherwise best offer for the Assets/Shares (the “**Successful Bid**”), or (ii) if no Binding APAs, other than the Stalking Horse Agreement, have been received by the Bid Deadline, then the Company shall declare the Stalking Horse Agreement as the Successful Bid; and

- (m) After determination of the Successful Bid, the Company will make a motion to the Court for an AVO or RVO in respect of the Successful Bid and underlaying purchase agreement.
- 53. The Proposed Monitor notes that the proposed timeframe set out above is condensed, but with the full cooperation of the Company and with the Stalking Horse Agreement in hand, the Proposed Monitor believes that the deadlines proposed in the Sale Process are reasonable in the circumstances.
- 54. The Proposed Monitor is of the view that, in the circumstances, the proposed Sale Process represents the best opportunity to identify a potential going concern sale for the Company's Assets or Shares and the best potential to maximize value for the benefit of its stakeholders.

XI. STALKING HORSE AGREEMENT

- 55. The Company has negotiated the Stalking Horse Agreement with the Stalking Horse Bidder which provides that, unless an offer is received through the Sale Process that, among other things, provides for consideration that is at least \$10,000 in excess of the purchase price contemplated by the Stalking Horse Agreement, then the transaction contemplated by the Stalking Horse Agreement would be completed. A copy of the Stalking Horse Agreement is attached hereto as **Appendix "E"**.
- 56. The Stalking Horse Agreement contemplates the purchase of substantially all of the assets of Medifocus (the "**Purchased Assets**") and the assumption of substantially all of its liabilities relating to the Purchased Assets and which are due and payable or relate to the period from and

after the closing date.

57. The salient terms of the Stalking Horse Agreement are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Stalking Horse Agreement):

(a) The Purchase Price is the aggregate of the following amounts:

- i. The assignment and assumption of the amount of the DIP Loan advanced by the Purchaser to the Vendor pursuant to the DIP Loan Agreement;
- ii. The payment, in cash, or the assumption of, any payables of the Vendor, which by operation of law, are in priority to the security interest of the Purchaser in respect to the Purchaser Debt (the “**Priority Payables**”); and
- iii. The amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).

58. The Stalking Horse Bidder will be entitled to an expense reimbursement fee up to \$25,000 should a purchaser other than the Stalking Horse Bidder close a transaction through the Sales Process.

XII. CREDITOR NOTIFICATION

59. The proposed Initial Order requires the Monitor to:

- (a) publish without delay a notice in the national edition of *The Globe and Mail* newspaper containing the information prescribed under the CCAA; and

(b) within five days of the granting of the Initial Order to:

- i. make the Initial Order publicly available in the manner prescribed under the CCAA;
- ii. send, in the prescribed manner, a notice to every known creditor who has a claim against the Company of more than \$1,000 advising that the order is publicly available; and
- iii. prepare a list, showing the names and addresses of those creditors, and the estimated amounts of those claims, and make it publicly available in the prescribed manner.

60. If appointed Monitor, Spergel will also post the Initial Order and all motion materials on its Case Website in accordance with the E-Service Protocol.

XIII. ACTIVITIES OF THE PROPOSAL TRUSTEE SINCE FILING DATE

61. The Proposal Trustee's activities since the Filing Date have included, inter alia, the following:

- (a) sending a notice, within five days of the Filing Date, of the NOI proceedings to all known creditors of Medifocus with claims of \$250 or more, in accordance with the BIA. Notice was also sent to certain other persons, including creditors with claims less than \$250, applicable tax authorities and any other party that requested a copy;
- (b) establishing and maintaining the Case Website where material documents pertaining to these proceedings are available in

electronic form;

- (c) implementing procedures for the monitoring of the Company's sales and cash flows and for ongoing reporting of variances to the Cash Flow Forecast;
- (d) assisting the Company with preparing the Cash Flow Forecast and filing same with the Office of the Superintendent of Bankruptcy pursuant to the BIA;
- (e) meeting and corresponding with the Company and its legal counsel regarding the Cash Flow Forecast, cash management, supplier issues, landlord matters and various other matters in connection with the Company's operations and its NOI proceedings;
- (f) responding to calls and enquiries from creditors and other stakeholders in connection with the NOI proceedings;
- (g) reviewing materials filed with the Court in respect of the NOI proceedings, and this Motion with respect to the requested conversion to CCAA proceedings; and
- (h) drafting this First Report.

XIV. CONCLUSION AND RECOMMENDATIONS

62. Based on the foregoing, Spegel, in its capacity as Proposal Trustee, and in its capacity as Proposed Monitor, respectfully recommends that this Court issue an order, *inter alia*:

- (a) converting the Company's NOI proceedings to CCAA proceedings;

- (b) appointing Spergel as the Monitor under the CCAA proceedings;
- (c) extending the Stay Period to January 7, 2022;
- (d) authorizing the Proposed Monitor to conduct the Sale Process;
- (e) authorizing the Company to enter into the Stalking Horse Agreement and approving the Stalking Horse Agreement and the Sale Process;
- (f) approving the DIP Term Sheet, pursuant to which Medifocus will obtain DIP financing up to a maximum of \$700,000;
- (g) granting the Priority Charges; and
- (h) Such further and other relief as may be requested and this Court deems just.

Dated at Toronto this 5th day of October, 2021

msi Spergel inc.,
solely in its capacity as Trustee *in re* the Proposal of Medifocus Inc.
and not in its personal or corporate capacity

- and –

msi Spergel inc.
as the Proposed Monitor in Medifocus Inc.
and not in its personal or corporate capacity

Per:



Mukul Manchanda, CPA, CIRP, LIT
Principal

APPENDIX “F”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.**

**SECOND REPORT OF MSI SPERGEL INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

January 4, 2022

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APPENDICES

- A. Initial Order dated October 7, 2021
- B. First Report of the Proposed Monitor (without appendices)
- C. The Sale Process
- D. Copies of notices published in The Globe and Mail, The Washington Sun and The Baltimore Post
- E. The Stalking Horse Agreement
- F. Updated Cash Flow Projection
- G. Company's Report on Cash Flow
- H. Monitor's Report on Cash Flow

I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“**Medifocus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**Spergel**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI (the “**NOI Proceedings**”).
2. On October 7, 2021, the Company brought an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) seeking an Order or Orders, among other things,
 - (a) converting the NOI Proceedings into proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in order to allow for the completion of its restructuring process under the CCAA and providing the Company with a stay of proceedings through to and including January 7, 2022 (the “**Stay Period**”);
 - (b) terminating Spergel’s appoint as Proposal Trustee and appointing Spergel as Monitor of the Company under the CCAA proceedings (in such capacity, the “**Monitor**”);
 - (c) approving the Sale Process and the Stalking Horse Agreement (each as defined in the Initial Order);
 - (d) approving the Administration Charge (as defined in the Initial Order) to secure payment of the fees and expenses of the Monitor, the Monitor’s Counsel and counsel to the Company; and

- (e) approving interim financing and the DIP Lender's Charge (as defined in the Initial Order);
- 3. By order of the Honourable Mr. Justice Cavanagh dated October 7, 2021 (the "**Initial Order**"), the Court approved the relief sought by the Company. A copy of the Initial Order is attached hereto as **Appendix "A"**.
- 4. The Monitor engaged Aird & Berlis LLP as its independent legal counsel (the "**Monitor's Counsel**").
- 5. Further details regarding the Company and background leading up to the NOI Proceedings and the subsequent conversion to CCAA can be found in the First Report of the Proposal Trustee (and the Proposed Monitor) dated October 5, 2021 (the "**First Report**"). A copy of the First Report, without appendices, is attached hereto as **Appendix "B"**.

II. PURPOSE OF THIS REPORT AND DISCLAIMER

- 6. The purpose of this second report (the "**Second Report**") is to provide the Court with information pertaining to:
 - (a) its activities and general updates since the First Report;
 - (b) the Sale Process carried out by the Monitor;
 - (c) the Monitor's comments and report on the Company's updated cash flow projection for the period through for the period to and including March 4, 2022 (the "**Updated Cash Flow Projection**");
 - (d) the Company's request for an extension of the Stay Period from January 7, 2022 to and including February 8, 2022; and

- (e) the Proposal Trustee's recommendation that this Court make an Order, as requested by the Company, extending the Stay Period.

Restrictions and Disclaimer

7. In preparing this Second Report, the Monitor has relied upon certain information provided to it by the Company's management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.
8. The cash flow forecast and projections in this Second Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
9. This Second Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively

assessed at this time, and the Proposal Trustee has not endeavored to do so in this Second Report.

10. Parties using this Second Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
11. This Second Report should be read in conjunction with the Affidavit of Raymond Tong sworn December 30, 2021 as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.
12. Court materials in these proceedings can be found on Spergel's Case Website at <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
13. All references to dollars in this Second Report are in Canadian currency unless otherwise noted.

III. BACKGROUND AND APPOINTMENT

14. Medifocus is a Canadian-owned, public biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
15. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., but primarily operates in the United States out of a facility located at 10240 Old Columbia Road, Suite G, Maryland, 21046. The Company also conducts business and holds patents across several jurisdictions, including many Asian countries.

16. Prior to the Filing Date, Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.
17. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
18. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the "**Asia Approvals**"). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
19. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
20. Medifocus therefore faced a liquidity crisis and mounting debt obligations

which limited the development of the treatment pipeline. In response, as set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, which NOI Proceedings were subsequently converted under the CCAA.

21. The Company is now seeking an extension to the Stay Period in order to complete the sale transaction contemplated by the Stalking Horse Agreement (as defined below).

IV. THE SALE PROCESS

22. The purpose of the Sale Process approved by the Court pursuant to the Initial Order was to provide third parties with an opportunity to submit bids for the acquisition of the Company's Assets or Shares. A copy of the Court approved Sale Process is attached to this Second Report as **Appendix "C"**.
23. The Initial Order also approved a Stalking Horse Agreement between the Company, as vendor, and Asset Profits Limited and/or its permitted assignee, as purchaser ("**APL**" or the "**Stalking Horse Bidder**"). Given the Stalking Horse Bidder is the sole secured creditor of the Company, the Monitor administered all aspects of the Sale Process on behalf of the Company.
24. The key aspects of the Sale Process are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Sale Process):
 - (a) In accordance with the Initial Order, within five (5) calendar days of the Sale Process being approved by the Court, the Monitor

published a notice advertising the opportunity in the Globe and Mail. In addition, the Monitor published a notice advertising the opportunity in the Washington Post and the Baltimore Sun. Copies of the published notices are attached to this Second Report as **Appendix “D”**;

- (b) In addition to the above, the Monitor published a notice advertising the opportunity in the Insolvency Insider and on the Monitor’s Case Website.
 - (c) Three Interested Parties advised the Monitor that they wished to commence due diligence. Only 2 of the 3 Interested Parties executed a non-disclosure agreement (“**NDA**”);
 - (d) Upon execution of the NDA, the Monitor provided access to the virtual data room established and maintained by the Monitor. The data room was populated by the Monitor with the assistance of the Company; and
 - (e) Binding APAs were due in writing to the Monitor by no later than 5:00pm (EST) on November 22, 2021 (the “**Bid Deadline**”). No such Binding APAs (with the exception of the Stalking Horse Agreement) were received by the Bid Deadline. Pursuant to the Sale Process, the Stalking Horse Agreement is deemed to be a Binding APA.
25. As no other bids besides the Stalking Horse Agreement were received by the Bid Deadline, the Stalking Horse Agreement was declared to be the Successful Bid (as defined in the Sale Process).

26. As previously noted, the Stalking Horse Bidder made certain loan advances to the Company, which advances were secured by, among other security, a general security agreement granted dated April 21, 2021 by the Company in favour of APL (the “**Security**”). APL has registered the Security in Ontario.
27. As part of the consideration under the terms of the Stalking Horse Agreement, the Stalking Horse Bidder is, in part, credit bidding its secured debt formed part of the purchase price. Accordingly, the Monitor engaged the Monitor’s Counsel to undertake an independent review of the Security.
28. The Monitor has received a written opinion from the Monitor’s Counsel confirming that, subject to typical qualifications and assumptions, the Security is valid and enforceable in accordance with its terms in the province of Ontario.

V. STALKING HORSE AGREEMENT

29. As mentioned, the Sale Process provides that unless a Binding APA was received through the Sale Process that, among other things, provides for consideration that is at least \$10,000 in excess of the purchase price contemplated by the Stalking Horse Agreement, then the transaction contemplated by the Stalking Horse Agreement would be declared the Successful Bid and be completed. A copy of the Stalking Horse Agreement is attached hereto as **Appendix “E”**.
30. The salient terms of the Stalking Horse Agreement are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Stalking Horse Agreement):

- (a) The Purchase Price is the aggregate of the following amounts:
- i. the assignment and assumption of the amount of the DIP Loan advanced by the Purchaser to the Company pursuant to the DIP Loan Agreement;
 - ii. the payment, in cash, or the assumption of, any payables of the Company, which by operation of law, are in priority to the Security of APL in respect to the Purchaser Debt (collectively, the “**Priority Payables**”); and
 - iii. the amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).
31. The Stalking Horse Bidder has requested that the Company and the Monitor consider a transaction structure that minimizes costs and the tax impacts associated with asset sales including taking necessary steps to preserve crucial regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals. The transaction structure proposed by the Stalking Horse Bidder is in the form of a reverse vesting order that allows the Company to retain its assets and vest out its liabilities and, most importantly, preserve the existing regulatory approvals currently in place.
32. The Company and the Stalking Horse Bidder have advised the Monitor that they require additional time beyond the timelines provided for in the Sale Process to settle the transaction documentation, seek court approval of the transaction, and close the transaction contemplated by the Stalking Horse Agreement. As the Sale Process was approved by the Court and there is no mechanism of extension by the Monitor, the Company is

seeking this Court's approval of a revised timetable for closing to permit the sale transaction to close by February 8, 2022.

33. The Monitor is of the view that such extension is reasonable in the circumstances and should provide the Company with enough time to finalize the transaction structure, complete the required transaction documentation, seek the Court's approval of the transaction and close the transaction. The Monitor believes that the parties have conducted and continue to conduct themselves in good faith and with due diligence in pursuit of a transaction for the benefit of the Company's stakeholders, and that the proposed extension is favourable to that end.

VI. CASH FLOW FORECAST

34. The Company has prepared the Updated Cash Flow Projection for the period to and including March 4, 2022. The Updated Cash Flow Projection and the Company's statutory report on the Updated Cash Flow Forecast pursuant to Section 10(2)(b) of the CCAA are provided in **Appendices "F" and "G"**, respectively.
35. The Monitor has reviewed the Updated Cash Flow Projection, which indicates no sales until the completion of the sale transaction to the Stalking Horse Bidder. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court.
36. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor's statutory report on the cash flow is attached hereto at **Appendix "I"**.

VII. ACTIVITIES OF THE COMPANY AND THE MONITOR

Overview of Activities since the First Report

37. Since the Initial Order was granted, the Company has, among other things:
- (a) communicated with the Monitor and the Company's counsel on various matters in connection with the CCAA proceedings;
 - (b) assisted the Monitor in preparation of materials with respect to the Sale Process including preparation of the teaser document and the electronic data room; and
 - (c) worked with the Monitor to prepare the Updated Cash Flow Projection.
38. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:
- (a) establishing and maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
 - (b) conducting the Sale Process as described in this Second Report;
 - (c) implementing procedures for the monitoring of the Company's cash flows and for ongoing reporting of variances;
 - (d) assisting the Company with preparing the Updated Cash Flow Projection;

- (e) meeting and corresponding with the Company and its legal counsel regarding the Updated Cash Flow Projection, cash management, supplier issues, landlord matters and various other matters in connection with the Company's operations and its CCAA proceedings;
- (f) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings; and
- (g) reviewing materials filed with the Court in respect of the CCAA proceedings, and this Motion with respect to the requested stay extension.

VIII. CONCLUSION AND RECOMMENDATIONS

39. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order extending the Stay Period to and including February 8, 2022.

Dated at Toronto this 4th day of January, 2022

msi Spergel inc.
as the Monitor of Medifocus Inc.
and not in its personal or
corporate capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “G”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.**

**THIRD REPORT OF MSI SPERGEL INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

February 3, 2022

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APPENDICES

- A. Initial Order dated October 7, 2021
- B. Stay Extension Order dated January 7, 2022
- C. First Report of the Proposed Monitor (without appendices)
- D. Second Report of the Monitor (without appendices)
- E. Stalking Horse Agreement
- F. Updated Cash Flow Projection
- G. Company's Report on Cash Flow
- H. Monitor's Report on Cash Flow
- I. Fee Affidavit of Mukul Manchanda sworn February 3, 2022
- J. Fee Affidavit of Kyle Plunkett sworn February 2, 2022

I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“**Medifocus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**MSI**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI (the “**NOI Proceedings**”).
2. On October 7, 2021, the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order (the “**Initial Order**”), among other things,
 - (a) converting the NOI Proceedings into proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in order to allow for the completion of its restructuring process under the CCAA and providing the Company with a stay of proceedings through to and including January 7, 2022 (the “**Stay Period**”);
 - (b) terminating MSI’s appointment as Proposal Trustee and appointing MSI as Monitor of the Company under the CCAA proceedings (in such capacity, the “**Monitor**”);
 - (c) approving the Sale Process and the Stalking Horse Agreement (each as defined in the Initial Order);
 - (d) approving the Administration Charge (as defined in the Initial Order) to secure payment of the fees and expenses of the Monitor, the Monitor’s Counsel and counsel to the Company; and

- (e) approving interim financing and the DIP Lender's Charge (as defined in the Initial Order).
3. A copy of the Initial Order is attached hereto as **Appendix "A"**.
 4. The Monitor engaged Aird & Berlis LLP as its independent legal counsel (the "**Monitor's Counsel**").
 5. Further details regarding the Company and background leading up to the Filing Date as well as updates on the steps taken by the Company and the Monitor since the Filing Date can be found in the First Report of the Proposal Trustee (and the Proposed Monitor) dated October 5, 2021 (the "**First Report**") and the Second Report of the Monitor dated January 4, 2022 (the "**Second Report**"), respectively.
 6. The Initial Order approved the Sale Process which included a transaction contemplated by the Stalking Horse Agreement between the Company, as vendor, and Asset Profits Limited and/or its permitted assignee, as purchaser ("**APL**" or the "**Stalking Horse Bidder**"). The Monitor administered all aspects of the Sale Process with assistance of the Company.
 7. The Second Report provided details of the Sale Process conducted by the Monitor. As noted in the Second Report:
 - (a) In accordance with the Initial Order, within five (5) calendar days of the Sale Process being approved by the Court, the Monitor published a notice advertising the opportunity in the Globe and Mail. In addition, the Monitor published a notice advertising the opportunity in the Washington Post and the Baltimore Sun;

- (b) In addition to the above, the Monitor published a notice advertising the opportunity in the Insolvency Insider and on the Monitor's Case Website;
 - (c) Three Interested Parties advised the Monitor that they wished to commence due diligence. Only 2 of the 3 Interested Parties executed a non-disclosure agreement ("**NDA**");
 - (d) Upon execution of the NDA, the Monitor provided access to the virtual data room established and maintained by the Monitor. The data room was populated by the Monitor with the assistance of the Company;
 - (e) Binding APAs were due in writing to the Monitor by no later than 5:00pm (EST) on November 22, 2021 (the "**Bid Deadline**"). No such Binding APAs (with the exception of the Stalking Horse Agreement) were received by the Bid Deadline.
 - (f) Pursuant to the Sale Process, the Stalking Horse Agreement was deemed to be a Binding APA; and
 - (g) As there were no other bids received by the Bid Deadline, the Stalking Horse Agreement was declared to be the Successful Bid (as defined in the Sale Process).
8. On January 7, 2022, the Honourable Justice McEwen granted an Order (the "**Stay Extension Order**") further extending the Stay Period up to and including February 8, 2022 to permit the Company and the Stalking Horse Bidder to complete a transaction to the Stalking Horse Bidder. A copy of the Stay Extension Order is attached hereto as **Appendix "B"**.

9. All Court materials filed in these proceedings can be found on MSI's Case Website at: <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
10. For the Court's ease of reference on the within Motion, copies of the First Report and the Second Report of the Monitor (without Appendices) are attached hereto as **Appendices "C"** and **"D"**, respectively.

II. PURPOSE OF THIS REPORT AND DISCLAIMER

11. The purpose of this third report (the **"Third Report"**) is to provide the Court with information pertaining to:
 - (a) the Monitor's activities and general updates since the Second Report;
 - (b) the Monitor's comments and report on the Company's updated cash flow projection for the period to and including March 18, 2022 (the **"Updated Cash Flow Projection"**);
 - (c) information concerning the structure of the Reorganization Transaction (as defined herein) proposed by the Company;
 - (d) the Monitor's recommendation that this Court make the following order, as requested by the Company (the **"RVO and Discharge Order"**):
 - i. declaring that 1000101532 Ontario Inc., a newly incorporated corporation as part of the proposed Reorganization Transaction (**"ResidualCo"** together with Medifocus, and subject to the requested Order being

granted, the “**Applicants**”) is a company to which the CCAA applies;

- ii. adding ResidualCo as an Applicant in these CCAA proceedings;
- iii. an order approving the Reorganization Transaction (as contemplated in Section IV of this Third Report) and authorizing the Applicants and their successors (including Residual Co) to implement and complete the Reorganization Transaction;
- iv. granting a reverse vesting order in which:
 - a. all liabilities (other than the Assumed Liabilities), debts, obligations, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, and charges of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise (collectively, the “**Liabilities**”) of Medifocus shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo and shall no longer be obligations of Medifocus, and
 - b. all of Medifocus’ assets, licenses, undertakings, permits, approvals, and properties of every nature

and kind whatsoever and wherever situate shall be and are hereby forever released and discharged from all such liabilities vesting in ResidualCo;

- v. upon consummation of the Reorganization Transaction, PurchaseCo (as defined herein) shall be the sole shareholder of Medifocus and Medifocus shall be free and clear of and from any and all Liabilities other than Assumed Liabilities;
- vi. extending the Stay Period (as defined in the Initial Order) to and including March 15, 2022;
- vii. approving the fees and activities of the Monitor and its legal counsel, as described herein, including the Fee Accruals;
- viii. authorizing MSI to file an assignment in bankruptcy on behalf of ResidualCo; and
- ix. discharging the Monitor and terminating these CCAA proceedings upon filing of a certificate by the Monitor certifying that all outstanding matters involving the Monitor to be attended to in connection with the CCAA proceedings have been completed (including, without limitation, the completion of the Reorganization Transaction), in substantially the form attached as Schedule “B” to the RVO and Discharge Order (the “**Monitor’s Certificate**”).

Restrictions and Disclaimer

12. In preparing this Third Report, the Monitor has relied upon certain financial information, books and records and discussions with the Company's management ("**Management**") and its legal counsel (the "**Information**").
13. Although the Monitor has reviewed this Information for reasonableness, the Monitor has not performed an audit or verification of such Information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such Information.
14. The Monitor also bases its report on the cash flow projections provided by the Company and its Management. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. These cash flow projections contain reference to future events and are based on Management's assumptions and conditions that may not be ascertainable, actual results will vary from the projections, and such variations could be material and, accordingly, these assumptions may not remain valid throughout the period of the projections. Consequently, the reader is cautioned that they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods.
15. This Third Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the

Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this Third Report.

16. Parties using this Third Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
17. This Third Report should be read in conjunction with the Affidavit of Raymond Tong sworn February 2, 2022 as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.
18. Unless otherwise specified, all currency references in this Third Report are in Canadian dollars.

III. BACKGROUND AND APPOINTMENT

19. Medifocus is a Canadian-owned, public biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
20. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., and conducts business and holds patents across several jurisdictions, including many Asian countries.

21. Prior to the Filing Date, Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.
22. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
23. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the "**Asia Approvals**"). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
24. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
25. Medifocus therefore faced a liquidity crisis and mounting debt obligations

which limited the development of the treatment pipeline. In response, as set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, which NOI Proceedings were subsequently converted under the CCAA.

26. The Company is now seeking a further extension to the Stay Period and the relief noted in paragraph 11(d) of this Third Report in order to complete the Reorganization Transaction prior to concluding these CCAA proceedings.

IV. STALKING HORSE AGREEMENT AND THE REORGANIZATION TRANSACTION

27. As mentioned, the Sale Process provides that unless a Binding APA was received through the Sale Process that was superior to the transaction contemplated by the Stalking Horse Agreement, then the Stalking Horse Bid would be declared the Successful Bid and the parties would work to complete it. A copy of the Stalking Horse Agreement is attached hereto as **Appendix “E”**.

28. The salient terms of the Stalking Horse Agreement are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Stalking Horse Agreement):

- (a) The Purchase Price is the aggregate of the following amounts:
 - i. the assignment and assumption by the Purchaser of the amount of any advances under the DIP Loan to the Company pursuant to the DIP Loan Agreement during these proceedings;

- ii. the payment, in cash, or the assumption of, any payables of the Company, which by operation of law, are in priority to the Security of APL, as lender, in respect to the Purchaser Debt, including the payment of any amounts in respect of the Administration Charge (collectively, the “**Priority Payables**”); and
- iii. the amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).

(The assumptions of the amounts in (i) to (iii) above, are collectively, the “**Assumed Liabilities**”)

- 29. The Stalking Horse Bidder has considered an alternative transaction structure to effect the sale contemplated by the Stalking Horse Agreement and has requested that the Company and the Monitor consider a transaction structure that minimizes costs and the tax impacts associated with asset sales including taking necessary steps to preserve crucial regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals. The transaction structure proposed by the Stalking Horse Bidder below is in the form of a reverse vesting transaction that allows the Company to retain its assets and vest out its liabilities and, most importantly, preserve the existing regulatory approvals currently in place.
- 30. The Reorganization Transaction is outlined as follows:
 - (a) all of the liabilities of Medifocus other than the Assumed Liabilities shall be transferred to and vested in ResidualCo;

- (b) Medifocus shall apply to the Ontario Securities Commission (“**OSC**”) for a partial lifting of the Cease Trade Order in accordance with the *Securities Act* (Ontario), R.S.O. 1990, c. S5;
- (c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common shares that are issued pursuant to paragraph 30 (d) herein); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo;
- (d) the assets and regulatory approvals will remain with Medifocus, unaffected by the transaction;
- (e) APL (the “**Purchaser**”) or its permitted assignee (the “**Assignee**” and together with the Purchaser, “**PurchaseCo**”), as the case may be, shall subscribe for new shares of Medifocus to be paid by way of a credit bid of the secured indebtedness of the Purchaser (APL), existing as at the Filing Date, via private placement to be coordinated with the Toronto Stock Exchange;
- (f) all equity interests, compensation plans and other securities in Medifocus, other than PurchaseCo’s equity interest, shall be cancelled for no consideration such that PurchaseCo becomes the sole shareholder of Medifocus; and
- (g) Medifocus shall apply to the OSC to cease to be a reporting issuer, including full revocation of the Cease Trade Order,

(the “**Reorganization Transaction**”).

31. The Company and the Stalking Horse Bidder have advised the Monitor that they require additional time beyond the timelines provided for in the Sale Process to settle the transaction documentation, seek Court approval of the transaction and, lastly, close the transaction contemplated by the Stalking Horse Agreement, as supplemented and modified by the Reorganization Transaction.
32. As the Sale Process was approved by the Court and there is no mechanism of extension by the Monitor, the Company is seeking this Court's approval of a revised timetable for closing to permit the sale transaction to close by March 15, 2022.
33. The Monitor is of the view that such extension is reasonable in the circumstances and should provide the Company with enough time to finalize the transaction structure, complete the required transaction documentation related to the Reorganization Transaction, and close the transaction. Accordingly, the Monitor supports the Company's request for an extension to the Stay Period.
34. The Monitor believes that the parties have conducted and continue to conduct themselves in good faith and with due diligence in pursuit of a transaction for the benefit of the Company's stakeholders, and that the proposed extension is favourable to that end.
35. The Monitor recommends the Court approve the proposed transaction between the Company and the PurchaseCo, including the Reorganization Transaction pursuant to the proposed RVO and Discharge Order for the following reasons:
 - (a) the Sale Process was carried out in accordance with the terms of

the Initial Order;

- (b) in the Monitor's view, the duration of the Sale Process was sufficient to allow interested parties to perform diligence and submit offers. Additionally, the duration of the Sale Process was approved by the Court as part of the Initial Order;
- (c) considering the loans owing to APL on a secured basis, the assets of Medifocus would need to generate over \$2.0 million for there to be any funds available for creditors ranking behind APL;
- (d) the Monitor does not believe that further time spent marketing the Company's business and assets will result in a superior transaction, nor is there funding available to do so as the DIP Loan is projected to be fully drawn in the near term;
- (e) the Company's business requires the stability of a completed transaction and a timely exit from this proceeding in order to preserve crucial regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals, and to continue to operate as a going-concern;
- (f) APL is not willing to effect the Transaction absent the vesting out of the Liabilities (other than the Assumed Liabilities), given the risk of losing the regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals, which would significantly impact the value of the assets;
- (g) the Monitor is confident that the value of the proposed transaction with the PurchaseCo substantially exceeds the liquidation value of

the Company's assets; and

- (h) The Reorganization Transaction is necessary to effect the sale transaction efficiently and expeditiously.

V. CASH FLOW FORECAST

- 36. The Company has prepared the Updated Cash Flow Projection for the period to and including March 18, 2022. The Updated Cash Flow Projection and the Company's statutory report on the Updated Cash Flow Forecast pursuant to Section 10(2)(b) of the CCAA are provided in **Appendices "F" and "G"**, respectively.
- 37. The Monitor has reviewed the Updated Cash Flow Projection, which indicates no sales until the completion of the sale transaction to the Stalking Horse Bidder. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court.
- 38. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor's statutory report on the cash flow is attached hereto at **Appendix "H"**.

VI. ACTIVITIES OF THE COMPANY AND THE MONITOR

Overview of Activities since the Second Report

- 39. Since the Second Report, the Company, and its counsel, has, among other things:
 - (a) communicated with the Monitor and its legal counsel on various

matters in connection with the CCAA proceedings;

- (b) engaged with the Stalking Horse Bidder with respect to the Sale Process including on-going negotiations with respect to the structure of the Reorganization Transaction; and
- (c) worked with the Monitor to prepare the Updated Cash Flow Projection.

40. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:

- (a) maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
- (b) on-going monitoring of the Company's cash flows and for ongoing reporting of variances;
- (c) assisting the Company with preparing the Updated Cash Flow Projection;
- (d) meeting and corresponding with the Company and its legal counsel regarding the Updated Cash Flow Projection, cash management, supplier issues and various other matters in connection with the Company's operations and its CCAA proceedings;
- (e) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings; and
- (f) reviewing materials filed with the Court in respect of the CCAA proceedings, and this Motion with respect to the requested relief.

VII. FEES AND DISBURSEMENTS OF THE MONITOR

41. The Monitor and its independent legal counsel, Aird & Berlis LLP, have maintained detailed records of the professional time and costs incurred since the Initial Order was granted on October 7, 2021. Pursuant to the Initial Order, the Court granted the Administration Charge in the amount of \$200,000 to secure the fees and disbursements of the Monitor, its counsel, and the Company's counsel.
42. The total fees of the Monitor during the period to and including January 31, 2022 are set out in the affidavit of Mukul Manchanda (the "**Monitor's Fee Affidavit**"), sworn February 3, 2022 in support hereof, a copy of which is attached hereto as **Appendix "I"**. As set out in the Monitor's Fee Affidavit, the Monitor's fees incurred up to and including January 31, 2022 are \$62,520.38 (inclusive of taxes and disbursements).
43. The total legal fees incurred by the Monitor for services provided by the Monitor's independent legal counsel during the period from August 17, 2021 through January 25, 2022 are set out in the affidavit of Kyle Plunkett (the "**A&B Fee Affidavit**"), sworn February 2, 2022, in support hereof, a copy of which is attached hereto as **Appendix "J"**. As set out in the A&B Fee Affidavit, the legal fees incurred up to January 25, 2022 are \$39,037.79 (inclusive of taxes and disbursements).
44. The Monitor is of the view that these accounts are reasonable in the circumstances and respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.
45. Provided that there is no opposition to the relief sought in the Company's motion and that such relief is granted on February 8, 2022, the Monitor

estimates that the additional fees and disbursements necessary to complete these proceedings including disbursements and HST (collectively, the “**Fee Accrual**”) will be:

- (a) Monitor - \$16,950;
- (b) Monitor’s Counsel - \$16,950; and
- (c) MSI with respect to the bankruptcy of the Residual Co - \$11,300.

VIII. DISCHARGE OF MONITOR

46. Provided that the Company’s motion is granted, the Monitor proposes to attend to the following activities subsequent to the date of this Third Report and prior to the filing of the Monitor’s Certificate:

- (a) Ensuring that all outstanding matters involving the Monitor to be attended to have been completed (including, without limitation, obtaining confirmation of completion of the Reorganization Transaction); and
- (b) Completing all other residual and/or administrative matters in connection with MSI’s appointment as the Monitor including, without limitation, filing statutory reporting with the Office of the Superintendent of Bankruptcy.

IX. CONCLUSION AND RECOMMENDATIONS

47. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order, inter alia:

- (a) Declaring ResidualCo is a company to which the CCAA applies;
- (b) adding ResidualCo as an Applicant in these CCAA proceedings;
- (c) approving the Reorganization Transaction and the steps contemplated at paragraph 30 above;
- (d) further extending the Stay Period to March 15, 2022;
- (e) approving the fees and activities of the Monitor; and
- (f) terminating these CCAA proceedings following the filing of the Monitor's Certificate.

Dated at Toronto this 3rd day of February, 2022

msi Spergel inc.

in its capacity as Monitor of Medifocus Inc.
and not in its personal or corporate capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “H”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MEDIFOCUS INC.**

**FOURTH REPORT OF MSI SPERGEL INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

March 11, 2022

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APPENDICES

- A. Initial Order dated October 7, 2021
- B. Stay Extension Order dated January 7, 2022
- C. Reverse Vesting and Approval Order dated February 8, 2022
- D. First Report of the Proposed Monitor (without appendices)
- E. Second Report of the Monitor (without appendices)
- F. Third Report of the Monitor (without appendices)
- G. Updated Cash Flow Projection
- H. Company's Report on Cash Flow
- I. Monitor's Report on Cash Flow

I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“**Medifocus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**MSI**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI (the “**NOI Proceedings**”).
2. On October 7, 2021, the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order (the “**Initial Order**”), among other things,
 - (a) converting the NOI Proceedings into proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in order to allow for the completion of its restructuring process under the CCAA and providing the Company with a stay of proceedings through to and including January 7, 2022 (the “**Stay Period**”);
 - (b) terminating MSI’s appointment as Proposal Trustee and appointing MSI as Monitor of the Company under the CCAA proceedings (in such capacity, the “**Monitor**”);
 - (c) approving the Sale Process and the Stalking Horse Agreement (each as defined in the Initial Order);
 - (d) approving the Administration Charge (as defined in the Initial Order) to secure payment of the fees and expenses of the Monitor, the Monitor’s Counsel and counsel to the Company; and

- (e) approving interim financing and the DIP Lender's Charge (as defined in the Initial Order).
3. A copy of the Initial Order is attached hereto as **Appendix "A"**.
 4. The Monitor engaged Aird & Berlis LLP as its independent legal counsel (the "**Monitor's Counsel**").
 5. Further details regarding the Company and background leading up to the Filing Date as well as updates on the steps taken by the Company and the Monitor since the Filing Date can be found in the First Report of the Proposal Trustee (and the Proposed Monitor) dated October 5, 2021 (the "**First Report**"), the Second Report of the Monitor dated January 4, 2022 (the "**Second Report**") and the Third Report of the Monitor dated February 3, 2022 (the "**Third Report**"), respectively.
 6. The Initial Order approved the Sale Process which included a transaction contemplated by the Stalking Horse Agreement between the Company, as vendor, and Asset Profits Limited and/or its permitted assignee, as purchaser ("**APL**" or the "**Stalking Horse Bidder**"). The Monitor administered all aspects of the Sale Process with assistance from the Company.
 7. On January 7, 2022, the Honourable Justice McEwen granted an Order (the "**Stay Extension Order**") further extending the Stay Period up to and including February 8, 2022 to permit the Company and the Stalking Horse Bidder to conclude the Sale Process. A copy of the Stay Extension Order is attached hereto as **Appendix "B"**.
 8. The Third Report provided details of the Reorganization Transaction to be

undertaken by the Company. The salient terms of the Reorganization Transaction are as follows:

- (a) all of the liabilities of Medifocus other than the Assumed Liabilities (as defined in the Third Report) shall be transferred to and vested in ResidualCo;
- (b) Medifocus shall apply to the Ontario Securities Commission (“**OSC**”) for a partial lifting of the Cease Trade Order in accordance with the *Securities Act* (Ontario), R.S.O. 1990, c. S5;
- (c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common shares that are issued pursuant to paragraph 30 (d) herein); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo (defined below);
- (d) the assets and regulatory approvals will remain with Medifocus, unaffected by the transaction;
- (e) APL (the “**Purchaser**”) or its permitted assignee (the “**Assignee**” and together with the Purchaser, “**PurchaseCo**”), as the case may be, shall subscribe for new shares of Medifocus to be paid by way of a credit bid of the secured indebtedness of the Purchaser (APL), existing as at the Filing Date, via private placement to be coordinated with the Toronto Stock Exchange;
- (f) all equity interests, compensation plans and other securities in Medifocus, other than PurchaseCo’s equity interest, shall be

cancelled for no consideration such that PurchaseCo becomes the sole shareholder of Medifocus; and

- (g) Medifocus shall apply to the OSC to cease to be a reporting issuer, including full revocation of the Cease Trade Order,

(the “**Reorganization Transaction**”).

- 9. On February 8, 2022, the Honourable Justice Conway granted an Order (the “**Reverse Vesting and Approval Order**”) approving, amongst other things, the Reorganization Transaction and extending the Stay period up to and including March 15, 2022 to permit the Company and the Purchaser to complete the Reorganization Transaction. A copy of the Reverse Vesting and Approval Order is attached hereto as **Appendix “C”**.
- 10. All Court materials filed in these proceedings can be found on MSI’s Case Website at: <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
- 11. For the Court’s ease of reference on the within Motion, copies of the First Report, the Second Report and the Third Report of the Monitor (without Appendices) are attached hereto as **Appendices “D”, “E” and “F”**, respectively.

II. PURPOSE OF THIS REPORT AND DISCLAIMER

- 12. The purpose of this fourth report (the “**Fourth Report**”) is to provide the Court with information pertaining to:
 - (a) the Monitor’s activities and general updates since the Third Report;
 - (b) the Monitor’s comments and report on the Company’s updated

cash flow projection for the period to and including June 3, 2022 (the “**Updated Cash Flow Projection**”);

(c) extending the Stay Period (as defined in the Initial Order) to and including May 20, 2022; and

(d) approving the Revised Fee Accrual.

Restrictions and Disclaimer

13. In preparing this Fourth Report, the Monitor has relied upon certain financial information, books and records and discussions with the Company’s management (“**Management**”) and its legal counsel (the “**Information**”).
14. Although the Monitor has reviewed this Information for reasonableness, the Monitor has not performed an audit or verification of such Information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such Information.
15. The Monitor also bases its report on the cash flow projections provided by the Company and its Management. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. These cash flow projections contain reference to future events and are based on Management’s assumptions and conditions that may not be ascertainable, actual results will vary from the projections, and such variations could be material and, accordingly, these assumptions may not

remain valid throughout the period of the projections. Consequently, the reader is cautioned that they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods.

16. This Fourth Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this Fourth Report.
17. Parties using this Fourth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
18. This Fourth Report should be read in conjunction with the Affidavit of Raymond Tong sworn March 11, 2022 as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.
19. Unless otherwise specified, all currency references in this Fourth Report are in Canadian dollars.

III. BACKGROUND AND APPOINTMENT

20. Medifocus is a Canadian-owned, public biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
21. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., and conducts business and holds patents across several jurisdictions, including many Asian countries.
22. Prior to the Filing Date, Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.
23. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
24. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the "**Asia Approvals**"). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies.

- Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
25. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
 26. Medifocus therefore faced a liquidity crisis and mounting debt obligations which limited the development of the treatment pipeline. In response, as set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, which NOI Proceedings were subsequently converted under the CCAA.
 27. The Company is now seeking a further extension to the Stay Period and the relief noted in paragraph 12 of this Fourth Report in order to complete the Reorganization Transaction prior to concluding these CCAA proceedings.

IV. EXTENSION OF STAY PERIOD AND CASH FLOW FORECAST

28. The current stay of proceedings will expire on March 15, 2022. Medifocus is seeking a 66-day extension up to and including May 20, 2022.
29. The Company has prepared the Updated Cash Flow Projection for the period to and including June 3, 2022. The Updated Cash Flow Projection and the Company's statutory report on the Updated Cash Flow Forecast pursuant to Section 10(2)(b) of the CCAA are provided in **Appendices**

“G” and “H”, respectively.

30. The Monitor has reviewed the Updated Cash Flow Projection, which indicates no sales until the completion of the sale transaction to the Stalking Horse Bidder. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court.
31. Based on the Monitor’s review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor’s statutory report on the cash flow is attached hereto at **Appendix “I”**.
32. The Monitor supports the Company’s request for the stay extension for the following reasons:
 - (a) the Company will not be able to complete the Reorganization Transaction before the expiry of the current Stay Period, on March 15, 2022;
 - (b) the Reorganization Transaction will require additional time to complete, particularly to obtain the necessary approvals from the OSC and to effectuate the necessary steps to lift the Cease Trade Order;
 - (c) the Company is acting in good faith and with due diligence;
 - (d) it is the Monitor’s view that the extension of the Stay Period will not materially prejudice any group of creditors; and
 - (e) the Reorganization Transaction, if completed, will yield the greatest

recovery for the Company's creditors and its stakeholders.

V. ACTIVITIES OF THE COMPANY AND THE MONITOR

Overview of Activities since the Third Report

33. Since the Third Report, the Company, and its counsel, have, among other things:
- (a) communicated with the Monitor and its legal counsel on various matters in connection with the CCAA proceedings;
 - (b) engaged with the Purchaser with respect to completion of the Reorganization Transaction; and
 - (c) worked with the Monitor to prepare the Updated Cash Flow Projection.
34. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:
- (a) maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
 - (b) on-going monitoring of the Company's cash flows and for ongoing reporting of variances;
 - (c) assisting the Company with preparing the Updated Cash Flow Projection;
 - (d) meeting and corresponding with the Company and its legal counsel

regarding the Updated Cash Flow Projection, cash management, supplier issues and various other matters in connection with the Company's operations and its CCAA proceedings;

- (e) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings; and
- (f) reviewing materials filed with the Court in respect of the CCAA proceedings, and this Motion with respect to the requested relief.

VI. REVISED FEE ACCRUAL

35. In the Third Report, the Monitor noted that, provided that there was no opposition to the relief sought in the Company's motion and that such relief was granted on February 8, 2022, the Monitor estimated that the additional fees and disbursements necessary to complete these proceedings including disbursements and HST (collectively, the "**Fee Accrual**") would be:

- (a) Monitor - \$16,950;
- (b) Monitor's Counsel - \$16,950; and
- (c) MSI with respect to the bankruptcy of the Residual Co - \$11,300.

36. The Monitor and the Monitor's Counsel did not contemplate an additional stay extension request. Accordingly, the Monitor is requesting that the Fee Accrual (including disbursements and HST) be revised as follows:

- (a) Monitor - \$21,950

(b) Monitor's Counsel - \$21,950; and

(c) MSI with respect to the bankruptcy of the Residual Co - \$11,300

(collectively, the "**Revised Fee Accrual**")

VII. CONCLUSION AND RECOMMENDATIONS

37. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order, *inter alia*:

(a) further extending the Stay Period to May 20, 2022; and

(b) approving the Revised Fee Accrual.

Dated at Toronto this 11th day of March, 2022

msi Spergel inc.

in its capacity as Monitor of Medifocus Inc.
and not in its personal or corporate capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “I”

In the Matter of a Plan of Compromise or Arrangement of Medifocus Inc.

Cash Flow Statement (in US dollars)

For the period from May 21, 2022 to and including August 19, 2022

(USD)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	
Week Ending	20-May	27-May	03-Jun	10-Jun	17-Jun	24-Jun	01-Jul	08-Jul	15-Jul	22-Jul	29-Jul	05-Aug	12-Aug	19-Aug	Total
Operating Receipts															
Sales	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 54,000	\$ 54,000	\$ 54,000	\$ 54,000	\$ 54,000	\$ 54,000	\$ 54,000	378,000
Accounts Receivable	-	-	-	28,250	-	-	28,250	-	-	-	-	-	-	-	56,500
Expected return of fund from the State of Michigan	-	-	-	-	48,500	-	-	-	-	-	-	-	-	-	48,500
Accounts Receivable (from U.S.)	-	11,300	10,725	1,850	-	-	-	-	-	-	-	-	-	-	23,875
Total Operating Receipts	-	11,300	10,725	30,100	48,500	-	28,250	54,000	54,000	54,000	54,000	54,000	54,000	54,000	686,875
Operating Disbursements															
Payroll (salaries) to two employees	-	4,011	-	4,011	-	4,011	-	4,011	-	4,011	-	4,011	-	4,011	28,076
Federal Tax Withholding	-	388	-	388	-	388	-	388	-	388	-	388	-	388	2,714
Federal FICA and Medicare tax	-	997	-	997	-	997	-	997	-	997	-	997	-	997	6,982
401K Retirement Plan Employees' contribution	-	1,268	-	1,268	-	1,268	-	1,268	-	1,268	-	1,268	-	1,268	8,874
401K Retirement Plan Company's contribution	-	207	-	207	-	207	-	207	-	207	-	207	-	207	1,446
Maryland State Tax Withholding	-	354	-	354	-	354	-	354	-	354	-	354	-	354	2,479
Federal Unemployment Tax (\$420/year per employee)	-	-	-	840	-	840	-	840	-	840	-	840	-	840	5,040
State Unemployment Tax (varies, around 2.5% -13.5% now)	-	-	-	1,496	-	-	-	-	-	-	-	-	-	-	1,496
Health Insurance	-	-	-	3,318	-	-	-	3,318	-	-	-	3,318	-	-	9,954
FDA Fees	-	2,000	-	-	2,000	-	-	2,000	-	-	2,000	-	-	-	8,000
Liabilities/Auto/Property Insurance	-	-	3,500	-	-	-	-	2,200	-	-	-	2,200	-	-	7,900
Naren Patel (QC)	-	750	-	750	-	750	-	750	-	750	-	750	-	-	4,500
Bob Martak (accounting help)	-	500	-	500	-	500	-	500	-	500	-	-	-	-	2,500
Dennis Smith	-	-	2,000	-	-	-	-	2,000	-	-	-	2,000	-	-	6,000
Danny Morales (independent technician)	-	-	-	-	-	-	-	-	-	-	7,500	7,500	7,500	7,500	30,000
Brenton Lewis (independent technician)	-	-	-	-	-	-	-	-	-	-	7,500	7,500	7,500	7,500	30,000
Theron Lewis	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Steve Young	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utilities	-	-	100	-	-	100	-	-	100	-	-	-	-	-	300
6 Storage Rentals	-	-	3,500	-	-	3,500	-	-	-	-	-	-	-	-	7,000
New office rent	-	-	-	-	-	-	4,000	-	-	-	4,000	-	-	-	8,000
Moving expenses	-	-	-	-	-	-	10,000	-	-	-	-	-	-	-	10,000
Accounting Software Monthly Fee	-	250	-	-	-	250	-	-	-	250	-	-	-	-	750
Other Office Expenses	500	-	500	-	500	-	500	-	-	-	-	-	-	-	2,000
Miscellaneous Expenses	-	-	-	5,000	-	-	5,000	-	-	5,000	-	-	-	-	15,000
Various past government liabilities (estimates)	-	-	-	15,000	-	-	-	15,000	-	-	-	-	-	-	30,000
Total Operating Expenses	600	10,724	9,800	34,128	2,500	13,164	19,500	33,832	100	14,584	21,000	31,332	15,000	23,084	229,910

Parts/Kits/Tooling Investment															-
Philips/Molex (parts)	-	-	13,800	-	-	-	-	-	-	-	-	-	-	-	13,800
Global Plastic (heat exchanger parts)	-	47,000	-	-	-	-	-	-	-	-	-	-	-	-	47,000
Amphenol Alden (749 RTMs)	-	-	-	-	75,000	-	-	-	-	-	-	-	-	-	75,000
Amphenol Alden (tooling equipment)	-	-	-	-	-	45,000	-	-	-	-	-	45,000	-	-	90,000
Integer/Lake Region Medical (1185 RTM trays)	-	-	29,625	-	-	-	-	-	-	-	-	-	-	-	29,625
Integer/Lake Region Medical (kits, parts and supplier sourcing)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Integer/Lake Region Medical (assuming 500 Prolieve kits purc	-	-	-	-	-	159,000	-	-	-	-	-	-	-	-	159,000
Total Parts/Tooling Investment	-	47,000	43,425	-	75,000	204,000	-	-	-	-	-	45,000	-	-	414,425
CCAA Profession Fee															
WFK / WD	-	-	25,000	-	-	-	-	35,000	-	-	-	-	40,000	-	100,000
Spergel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	25,000	-	-	-	-	35,000	-	-	-	-	40,000	-	100,000
Total Disbursements	500	57,724	78,025	34,128	77,500	217,164	19,500	68,832	100	14,564	21,000	76,332	55,000	23,064	743,435
Net Change in Cash	(500)	(46,424)	(67,300)	(4,028)	(29,000)	(217,164)	8,750	(14,832)	53,900	39,436	33,000	(22,332)	(1,000)	30,936	-236,560
Net Change in Cash	(500)	(46,424)	(67,300)	(4,028)	(29,000)	(217,164)	8,750	(14,832)	53,900	39,436	33,000	(22,332)	(1,000)	30,936	-236,560
Opening Cash	500	-	3,576	1,276	47,247	18,247	1,083	9,833	1	53,901	93,336	126,336	104,004	103,004	500
DIP Financing / Advance from Asset Profits Limited	-	50,000	65,000	50,000	-	200,000	-	5,000	-	-	-	-	-	-	370,000
Ending Cash	-	3,576	1,276	47,247	18,247	1,083	9,833	1	53,901	93,336	126,336	104,004	103,004	133,940	133,940

Dated the 18th day of May, 2022



 Douglas G. Liu, VP Finance
 Medifocus Inc.

APPENDIX “J”

Report on Cash-Flow Statement by the Insolvent Company
(Paragraph 10(2) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MEDIFOCUS INC.

The management of Medifocus Inc. (the "**Company**") has developed the assumptions and prepared the attached statement of projected cash flow as of the 18th day of May, 2022 consisting of statement of Projected Cash Flow for the period from May 18, 2022 to August 15, 2022 (the "**Cash Flow**").

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.


Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of COLUMBIA in the Province/State of MARYLAND, this 18th day of May, 2022.

Medifocus Inc.

Per:



Douglas G. Liu, VP Finance

Report on Cash-Flow Statement by the Insolvent Company
(Paragraph 10(2) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MEDIFOCUS INC.

Purpose

1. The Purpose of the projection is to present the Cash Flow of the Company in accordance with the requirements of Section 10(2)(b) of the CCAA.

Projections Notes

2. The Cash Flow should be read in conjunction with the Monitor's Report on the Cash Flow Statement and the assumptions below.
3. The Cash Flow is made during a global pandemic due to the novel coronavirus, known as COVID-19 (the "**Pandemic**") and during a time in which the Province of Ontario has issued certain emergency orders requiring mandatory closures of businesses, including the Company's. As a result of the Pandemic, the situation continues to evolve and many uncertainties remain as to the effect of the Pandemic on the Company and the economic conditions, which could have material impacts on the Company and the projections in the Cash Flow.

Assumptions

4. The main purpose of the Cash Flow is to provide the stakeholders with information with respect to the cash requirements of the Company until the Reorganization Transaction can be finalized. It is anticipated that the previously approved DIP financing and advances from Asset Profits Limited, the Purchaser, will be sufficient to fund the cash flow requirements of the Company during the stay extension sought by the Company.
5. Amounts owing to Canada Revenue Agency and/or Internal Revenue services with respect to payroll source deductions will continue to be paid in the ordinary course.

6. Creditors continue to provide same terms as prior to this filing, with the exception of critical suppliers who may be paid upon delivery of goods.
7. Payroll costs are based on limited staffing due to the Pandemic.

Dated at the City of Columbia in the Province/State of MARYLAND, this 18th day of May, 2022.

Medifocus Inc.

Per:

Douglas G. Liu
Douglas G. Liu, VP Finance

APPENDIX “K”

Report on Cash-Flow Statement by the Monitor
(Paragraph 23(1)(b) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED
(the "**CCAA**")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MEDIFOCUS INC.

The attached statement of projected cash flows of Medifocus Inc. (the "**Company**") as of the 18th day of May 2022, consisting of statement of Projected Cash Flow for the period from May 18, 2022 to August 15, 2022 (the "**Cash Flow**") has been prepared by the management of the Company for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the Company. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respect,

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurances as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 18th day of May, 2022.

msi Spergel inc

solely in its capacity as the Monitor
of Medifocus Inc. and not in its personal
or corporate capacity

Per:

A handwritten signature in black ink, appearing to read 'Mukul', is positioned above a horizontal line.

Mukul Manchanda, CPA, CIRP, LIT

Report on Cash-Flow Statement by the Monitor
(Paragraph 23(1)(b) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MEDIFOCUS INC.

Purpose

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Projections Notes

2. The Cash Flow should be read in conjunction with the Monitor's Report on the Cash Flow Statement and the assumptions below.
3. The Cash Flow is made during a global pandemic due to the novel coronavirus, known as COVID-19 (the "**Pandemic**") and during a time in which the Province of Ontario has issued certain emergency orders requiring mandatory closures of businesses, including the Company's. As a result of the Pandemic, the situation continues to evolve and many uncertainties remain as to the effect of the Pandemic on the Company and the economic conditions, which could have material impacts on the Company and the projections in the Cash Flow.

Assumptions

4. The main purpose of the Cash Flow is to provide the stakeholders with information with respect to the cash requirements of the Company until the Reorganization transaction can be completed. It is anticipated that the previously approved DIP financing and advances from Asset Profits Limited, the Purchaser, will be sufficient to fund the cash flow requirements of the Company during the stay extension sought by the Company.
5. Amounts owing to Canada Revenue Agency and/or Internal Revenue services with respect to payroll source deductions will continue to be paid in the ordinary course.

6. Creditors continue to provide same terms as prior to this filing, with the exception of critical suppliers who may be paid upon delivery of goods.
7. Payroll costs are based on limited staffing due to the Pandemic.

Dated at the City of Toronto in the Province of Ontario, this 18th day of May, 2022.

msi Spergel inc

solely in its capacity as the Monitor
of Medifocus Inc. and not in its personal
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Per:

A handwritten signature in black ink, appearing to read 'Mukul', written over a horizontal line.

Mukul Manchanda, CPA, CIRP, LIT

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIFTH REPORT OF MSI SPERGEL
INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

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