

**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

Table of Contents

I. INTRODUCTION.....	4
II. PURPOSE OF THIS REPORT AND DISCLAIMER	5
III. BACKGROUND AND APPOINTMENT	8
IV. CASH FLOW FORECAST	10
V. PURPOSE AND OBJECTIVE OF THE PROPOSED CONVERSION TO CCAA PROCEEDINGS	10
VI. QUALIFICATIONS TO ACT AS MONITOR.....	12
VII. PROPOSED DIP FINANCING	13
VIII. ADMINISTRATION CHARGE	15
IX. PRIORITY CHARGES.....	15
X. PROPOSED SALE PROCESS	16
XI. STALKING HORSE AGREEMENT	21
XII. CREDITOR NOTIFICATION	22
XIII. ACTIVITIES OF THE PROPOSAL TRUSTEE SINCE FILING DATE	23
XIV. CONCLUSION AND RECOMMENDATIONS.....	24

APPENDICES

- 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 “A”



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2764805
Estate No. 31-2764805

In the Matter of the Notice of Intention to make a proposal of:

MEDIFOCUS INC.

Insolvent Person

MSI SPERGEL INC

Licensed Insolvency Trustee

Date of the Notice of Intention:

September 08, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: September 08, 2021, 13:17

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

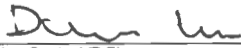
Canada

APPENDIX “B”

In the Matter of the Proposal of Medifocus Inc.
Cash Flow Statement (in US dollars)
For the 13-week period ending November 26, 2021

For the 13-week period ending November 26, 2021		Initial Stay Period					Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	
(USD)	Week Ending	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	
		03-Sep	10-Sep	17-Sep	24-Sep	01-Oct	08-Oct	15-Oct	22-Oct	29-Oct	05-Nov	12-Nov	19-Nov	26-Nov	Total
Operating Receipts															
Sales		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Accounts Receivable		-	5,000	10,000	-	-	-	-	-	-	-	-	-	-	15,000
Total Operating Receipts		-	5,000	10,000	-	-	-	-	-	-	-	-	-	-	15,000
Operating Disbursements															
Payroll (salaries) to two employees		4,011	-	4,011	-	4,011	-	4,011	-	4,011	-	4,011	-	4,011	28,075
Federal Tax Withholding (paid from employees salaries)		388	-	388	-	388	-	388	-	388	-	388	-	388	2,714
Federal FICA and Medicare tax (50% paid by employees, 50% paid by company)		997	-	997	-	997	-	997	-	997	-	997	-	997	6,982
401K Retirement Plan Employees' contribution (paid from employees salaries)		1,268	-	1,268	-	1,268	-	1,268	-	1,268	-	1,268	-	1,268	8,874
401K Retirement Plan Company's contribution (matching 3% of salary)		207	-	207	-	207	-	207	-	207	-	207	-	207	1,446
Maryland State Tax Withholding (paid from employees salaries)		354	-	354	-	354	-	354	-	354	-	354	-	354	2,479
Federal Unemployment Tax (\$420/year per employee)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Unemployment Tax (varies, around 2.5% -13.5% now)		-	1,496	-	-	-	-	1,496	-	-	-	-	1,496	-	4,488
FDA Fees		-	-	2,000	-	-	-	2,000	-	-	-	2,000	-	-	6,000
Liabilities/Auto/Property Insurance		3,000	-	-	-	3,000	-	-	-	3,000	-	-	-	3,000	12,000
Naren Patel (QC) (including \$5,000 outstanding invoice)		1,000	-	1,000	-	1,000	-	1,000	-	1,000	-	1,000	-	1,000	7,000
Bob Martak (accounting help)		500	-	500	-	500	-	500	-	500	-	500	-	500	3,500
Danny Morales (independent technician, owed \$2,500)		-	2,500	-	-	-	-	-	-	-	-	-	-	-	2,500
New Storages Rent		-	-	-	3,000	-	-	-	3,000	-	-	-	-	3,000	9,000
Utilities (electricity, phone, internet)		-	1,000	-	-	-	-	1,000	-	-	-	1,000	-	-	3,000
Storages in three states		-	350	-	-	-	350	-	-	-	350	-	-	-	1,050
Sage Accounting Software Monthly Fee		-	-	-	517	-	-	-	517	-	-	-	517	-	1,551
Other Office Expenses		-	1,000	-	-	-	1,000	-	-	1,000	-	-	-	1,000	4,000
Professional Fees		-	-	-	40,000	25,000	25,000	25,000	10,000	10,000	10,000	10,000	10,000	10,000	175,000
Miscellaneous Expenses		-	1,000	-	-	-	1,000	-	-	1,000	-	-	-	1,000	4,000
Moving expenses		-	-	-	6,000	-	-	-	-	-	-	-	-	-	6,000
Philips/Molex (parts)		-	-	14,014	-	-	-	-	-	-	-	-	-	-	14,014
Amphenol Alden (parts and equipment)		-	-	31,900	-	-	-	45,000	70,403	-	-	-	-	-	147,303
Integer/Lake Region Medical (parts and supplier sourcing charges)		-	-	105,000	-	-	-	-	-	-	-	-	105,000	20,000	230,000
Total Operating Disbursements		11,724	7,346	161,638	49,517	36,724	27,350	83,220	83,920	23,724	10,350	21,724	117,013	46,724	680,976
Net Change in Cash from Operations		(11,724)	(2,346)	(151,638)	(49,517)	(36,724)	(27,350)	(83,220)	(83,920)	(23,724)	(10,350)	(21,724)	(117,013)	(46,724)	(665,976)
Net Change in Cash		(11,724)	(2,346)	(151,638)	(49,517)	(36,724)	(27,350)	(83,220)	(83,920)	(23,724)	(10,350)	(21,724)	(117,013)	(46,724)	(665,976)
Opening Cash		16,000	164,276	161,930	110,291	60,774	24,050	96,700	13,480	29,560	5,835	(4,515)	123,761	6,748	16,000
DIP Financing		160,000	-	100,000	-	-	100,000	-	100,000	-	-	150,000	-	45,000	655,000
Ending Cash		164,276	161,930	110,291	60,774	24,050	96,700	13,480	29,560	5,835	(4,515)	123,761	6,748	5,024	5,024

Dated the 16th day of September, 2021.


Douglas G. Liu, VP Finance
Medifocus Inc.

District of: Ontario
Division No. 09 - Toronto
Court No. 31-2764805
Estate No. 31-2764805

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the Matter of the Proposal of
MEDIFOCUS INC.
of the City of Toronto, in the Province of Ontario

The management of MEDIFOCUS INC., has/have developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 16th day of September 2021, consisting of Statement of Projected Cash Flow for the Period from September 3, 2021 to November 26, 2021.

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 insolvent person 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 Toronto in the Province of Ontario, this 16th day of September 2021.

Dou Li

MEDIFOCUS INC.
Debtor

DOUGLAS LIM, VP-FINANCE

Name and title of signing officer

Name and title of signing officer

District of: Ontario
Division No. 09 - Toronto
Court No. 31-2764805
Estate No. 31-2764805

FORM 30 - Attachment
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the Matter of the Proposal of
MEDIFOCUS INC.
of the City of Toronto, in the Province of Ontario

Purpose:

The purpose of the Projection is to present the Statement of Projected Cash Flow ("Cash Flow") of Medifocus Inc. (the "Company") for the period from September 3, 2021 to November 26, 2021 in accordance with the requirements of Section 50.4(2) of the Bankruptcy and Insolvency Act ("BIA").

Projection Notes:

1. This Cash Flow should be read in conjunction with the Trustee's Report on Cash Flow Statement and the assumptions below.
2. This 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:

1. The main purpose of the Cash Flow is to determine the liquidity requirement of the Company.
2. The Company was not paying rent during the Pandemic period as a result of the restrictions on operations. The Company is in the process of moving premises.
3. The collection of sales and accounts receivable is based on limited recent monthly experience.
4. Amounts owing to Canada Revenue Agency and/or Internal Revenue Service with respect to payroll source deductions will continue to be paid in the ordinary course.
5. 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.
6. Payroll costs are based on limited staffing due to the Pandemic and that once the Company is permitted to resume regular operations, employees will return to work.
7. The Company is projecting to obtain, subject to court approval, debtor-in-possession financing to fund its operations during the forecasted period.

Dated at the City of Toronto in the Province of Ontario, this 16th day of September 2021.



MEDIFOCUS INC.

Court No. 31-2764805

File No. 31-2764805

In the Matter of the Proposal of
MEDIFOCUS INC.
of the City of Toronto, in the Province of Ontario

Form 30
Report on cash-flow statement by the person
making the proposal

Trustee: Mukul Manchanda
License: 3774
Email: mmanchanda@spergel.ca

msi Spergel inc. - Licensed Insolvency Trustee
Per:

Mukul Manchanda - Licensed Insolvency Trustee
200 - 505 Consumers Rd.
Toronto ON M2J 4V8
Phone: (416) 497-1660 Fax: (416) 494-7199

September 16, 2021

msi Spergel inc.
505 Consumers Road, Suite 200
North York, ON M2J 4V8
Attention: Mukul Manchanda

Dear Sir,

Re: In the Matter of the Proposal of Medifocus Inc. – Responsibilities/Obligations and Disclosure with Respect to Cash-flow Projections

In connection with the application by Medifocus Inc. ("**Medifocus**" or the "**Company**") for the commencement of proceedings under the *Bankruptcy and Insolvency Act* (the "**BIA**"), the management of Medifocus (the "**Management**") has prepared the attached cash-flow statement and the assumptions on which the cash-flow statement is based.

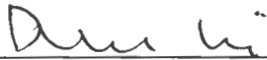
Medifocus confirms that:

1. the cash-flow statement and the underlying assumptions are the responsibility of the Company.
2. all material information relevant to the cash-flow statement and to the underlying assumptions has been made available to msi Spergel inc. in its capacity as the Trustee (the "**Trustee**").
3. Management has taken all actions that it considers necessary to ensure:
 - a) That the individual assumptions underlying the cash-flow statement are appropriate in the circumstances.
 - b) That the assumptions underlying the cash-flow statement, taken as a whole, are appropriate in the circumstances.
 - c) That all relevant assumptions have been properly presented in the cash-flow statement or in the notes accompanying the cash-flow statement.
4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of the Company, is ultimately

at your sole discretion, notwithstanding that Management may disagree with such determination.

5. Management understands its duties and obligations under the BIA and that a breach of these duties and obligations could make the Company Management liable to fines and imprisonment in certain circumstances.
6. The cash-flow statement and assumptions have been reviewed and approved by the Company's board of directors or management has been duly authorized by the Company's board of directors to prepare and approve the cash-flow assumptions.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Douglas Liu', is written over a horizontal line.

Name: Douglas Liu
Title: VP, Finance

APPENDIX “C”

District of: Ontario
Division No. 09 - Toronto
Court No. 31-2764805
Estate No. 31-2764805

-- FORM 29 --
Trustee's Report on Cash-Flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the Matter of the Proposal of
MEDIFOCUS INC.
of the City of Toronto, in the Province of Ontario

The attached statement of projected cash flow of MEDIFOCUS INC., as of the 16th day of September 2021, consisting of Statement of Projected Cash Flow for the Period from September 3, 2021 to November 26, 2021, has been prepared by the management of the insolvent person (or the insolvent debtor) 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 insolvent person or ☐ the insolvent person. 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 projection. We have also reviewed the support provided by: ☒ management or ☐ the insolvent person for the probable assumptions and preparation and presentation of the projection.

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

(a) the hypothetical assumptions are not consistent with the purpose of the projection;

(b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or

(c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection 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 assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 16th day of September 2021.

msi Spergel inc. - Licensed Insolvency Trustee
Per:



Mukul Manchanda - Licensed Insolvency Trustee
200 - 505 Consumers Rd.
Toronto ON M2J 4V8
Phone: (416) 497-1660 Fax: (416) 494-7199

District of: Ontario
Division No. 09 - Toronto
Court No. 31-2764805
Estate No. 31-2764805

FORM 29 - Attachment
Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the Matter of the Proposal of
MEDIFOCUS INC.
of the City of Toronto, in the Province of Ontario

Purpose:

The purpose of the Projection is to present the Statement of Projected Cash Flow ("Cash Flow") of Medifocus Inc. (the "Company") for the period from September 3, 2021 to November 26, 2021 in accordance with the requirements of Section 50.4(2) of the Bankruptcy and Insolvency Act ("BIA").

Projection Notes:

1. This Cash Flow should be read in conjunction with the Trustee's Report on Cash Flow Statement and the assumptions below.
2. This 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:

1. The main purpose of the Cash Flow is to determine the liquidity requirement of the Company.
2. The Company was not paying rent during the Pandemic period as a result of the restrictions on operations. The Company is in the process of moving premises.
3. The collection of sales and accounts receivable is based on limited recent monthly experience.
4. Amounts owing to Canada Revenue Agency and/or Internal Revenue Service with respect to payroll source deductions will continue to be paid in the ordinary course.
5. 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.
6. Payroll costs are based on limited staffing due to the Pandemic and that once the Company is permitted to resume regular operations, employees will return to work.
7. The Company is projecting to obtain, subject to court approval, debtor-in-possession financing to fund its operations during the forecasted period.

Dated at the City of Toronto in the Province of Ontario, this 16th day of September 2021.

msi Spergel inc. - Licensed Insolvency Trustee

Per:



Mukul Manchanda - Licensed Insolvency Trustee
200 - 505 Consumers Rd.
Toronto ON M2J 4V8
Phone: (416) 497-1660 Fax: (416) 494-7199

Court No. 31-2764805

File No. 31-2764805

In the Matter of the Proposal of
MEDIFOCUS INC.
of the City of Toronto, in the Province of Ontario

Form 29 (Bill C-12)
Trustee's report on cash-flow statement

Trustee: Mukul Manchanda
License: 3774
Email: mmanchanda@spergel.ca

msi Spergel inc. - Licensed Insolvency Trustee
Per:

Mukul Manchanda - Licensed Insolvency Trustee
200 - 505 Consumers Rd.
Toronto ON M2J 4V8
Phone: (416) 497-1660 Fax: (416) 494-7199

APPENDIX “D”

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

APPENDIX “E”

Asset Profits Limited and/or its permitted assignee

the Purchaser

and

Medifocus Inc.

the Vendor

STALKING HORSE ASSET PURCHASE AGREEMENT

October 5, 2021

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION

Section 1.1	Defined Terms.....	1
Section 1.2	References and Usage.	7
Section 1.3	Headings, etc.	8
Section 1.4	Schedules.....	8

ARTICLE 2 PURCHASE AND SALE

Section 2.1	Purchased Assets.	8
Section 2.2	Excluded Assets.	10
Section 2.3	Assumed Liabilities.	10
Section 2.4	Assignment and Assumption of Consent Required Contracts.....	11

ARTICLE 3 PURCHASE PRICE

Section 3.1	Purchase Price.	11
Section 3.2	Payment of the Purchase Price.	12
Section 3.3	Purchase Price Allocation.	12
Section 3.4	No Effect on Other Rights.....	12

ARTICLE 4 TAX MATTERS

Section 4.1	Transfer Taxes.....	12
Section 4.2	Tax Elections.....	13

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1	Representations and Warranties of the Vendor.	13
Section 5.2	Representations and Warranties of the Purchaser.	14
Section 5.3	No Other Representations or Warranties.....	14
Section 5.4	AS IS, WHERE IS.	15

ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES

Section 6.1	Access by Purchaser.....	15
Section 6.2	Access by Monitor.	16
Section 6.3	Title and Risk.	16
Section 6.4	Employees.	16
Section 6.5	Notices and Requests for Consents.	17
Section 6.6	Transfer of the Purchased Assets.	17
Section 6.7	Actions to Satisfy Closing Conditions.	17

**ARTICLE 7
SALES PROCESS**

Section 7.1	Compliance with Sale Process.	17
Section 7.2	Expense Reimbursement.	17

**ARTICLE 8
CONDITIONS OF CLOSING**

Section 8.1	Conditions for the Benefit of the Purchaser.	19
Section 8.2	Conditions for the Benefit of the Vendor.	20
Section 8.3	Conditions for the Benefit of the Purchaser and the Vendor.....	21

**ARTICLE 9
CLOSING**

Section 9.1	Date, Time and Place of Closing.....	22
Section 9.2	Closing Procedures.....	22
Section 9.3	Monitor's Certificate.	22

**ARTICLE 10
TERMINATION**

Section 10.1	Termination Rights.....	22
Section 10.2	Effect of Termination.	23

**ARTICLE 11
MISCELLANEOUS**

Section 11.1	Notices.....	23
Section 11.2	Time of the Essence.	25
Section 11.3	Third Party Beneficiaries.....	25
Section 11.4	Expenses.....	25
Section 11.5	Amendments.....	25
Section 11.6	Waiver.	26
Section 11.7	Entire Agreement.	26
Section 11.8	Successors and Assigns.	26
Section 11.9	Severability.....	26
Section 11.10	Governing Law and Jurisdiction.	26
Section 11.11	Counterparts.	27

SCHEDULES

Schedule 1.1(a) – Excluded Contracts.....	30
Schedule 1.1(b) – Excluded Liabilities	31
Schedule 1.1(c) – Sale Process.....	32
Schedule 2.2(d) – Excluded Assets	33
Schedule 3.3 – Purchase Price Allocation.....	34
Schedule 5.1(e) – Priority Amounts	35

STALKING HORSE ASSET PURCHASE AGREEMENT

This stalking horse asset purchase agreement is dated October 5, 2021 between Medifocus Inc., as vendor (the “**Vendor**”) and Asset Profits Limited and/or its permitted assignee, as purchaser (the “**Purchaser**”, together with the Vendor, the “**Parties**” and each a “**Party**”).

RECITALS:

- (1) The Vendor is in the business of research, development and sale of medical device systems delivering focused microwave-generated heat to diseased tissue, thereby destroying or shrinking it (the “**Business**”). The Vendor has developed two platforms under which this heat is delivered for therapeutic purposes.
- (2) On September 8, 2021, the Vendor filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (the “**Proposal Proceedings**”) and msi Spergel Inc. was appointed as proposal trustee.
- (3) On October 7, 2021, the Vendor intends to bring an application for an initial order by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), among other things, (i) converting and continuing the Proposal Proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceedings**”) pursuant to which, *inter alia*, msi Spergel Inc. was appointed monitor (in such capacity, the “**Monitor**”), and (ii) approving the Court-supervised “stalking horse” Sale Process (as defined below).
- (4) In connection with the proposed Sale Process to be carried out by the Vendor, in consultation with the Monitor, the Purchaser, as a “stalking horse bidder”, has agreed to purchase, and the Vendor has agreed to sell, the Purchased Assets pursuant to and in accordance with the terms of the Sale Process and subject to and in accordance with the conditions of this Agreement.
- (5) The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated only pursuant to the Approval and Vesting Order to be obtained in the CCAA Proceedings.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Defined Terms.

As used in this Agreement (including the recitals above), the capitalized terms listed below shall have the corresponding meanings.

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to “control” another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning.

“Agreement” means this Asset Purchase Agreement and all attached Schedules, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and all attached Schedules and unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement.

“Ancillary Agreements” means all agreements, certificates and other instruments delivered or given pursuant to this Agreement.

“Approval and Vesting Order” means an approval and vesting order of the Court in form and in substance satisfactory to the Vendor and the Purchaser, each acting reasonably, approving this Agreement and vesting in and to the Purchaser the Purchased Assets, free and clear of and from any and all Encumbrances subject only to Permitted Liens to the extent and as provided for in such approval and vesting order.

“Assignment Order” means an order or orders of the Court, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving the assignment of one or more Consent Required Contracts for which the consent, approval or waiver of the party or parties thereto (other than the Vendor) required to assign such Consent Required Contracts has not been obtained by Closing.

“Assumed Contracts” means all of the Contracts of the Vendor used in the Business other than the Excluded Contracts.

“Assumed Liabilities” has the meaning specified in Section 2.3.

“BIA” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

“Books and Records” means all information in any form relating to the Purchased Assets, including books of account, financial, operations, sales books, tax, business, marketing, personnel and research information and records, technical information, drill logs, equipment logs, technical reports, operating guides and manuals and all other documents, files, correspondence and other information, including all data, information and databases stored on computer-related or other electronic media, but excluding the minute books and corporate records of the Vendor.

“Business” has the meaning specified in the preamble to this Agreement.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which major Canadian chartered banks are closed for business in the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

“Canada’s Anti-Spam Law” or **“CASL”** has the meaning specified in Section 2.1(k).

“CCAA” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

“CCAA Proceedings” has the meaning specified in the preamble to this Agreement.

“Closing” means the completion of the transaction of purchase and sale contemplated in this Agreement.

“Closing Date” means the date on which the Closing occurs, which date shall be no later than five (5) days from the issuance of the Approval and Vesting Order or such other date as mutually agreed between the Parties and the Monitor.

“Consent Required Contract” means any Assumed Contract or License that is material to the Business, which is not assignable in whole or in part without the consent, approval or waiver of the party or parties thereto (other than the Vendor).

“Contract” means all contracts, letters of intent, licenses, leases, agreements, obligations, promises, undertakings, arrangements, documents, commitments, entitlements or engagements to which the Vendor is a party or by which the Vendor is bound relating to the Purchased Assets and/or the Business, all as may be amended and/or restated, and including any and all related quotations, orders, proposals or tenders which remain open for acceptance, warranties and guarantees and documents ancillary thereto.

“Credit Bid Amount” has the meaning specified in Section 3.1(c).

“Cure Costs” means, in respect of any Consent Required Contract for which an Assignment Order is required, all amounts owing as at the Closing Date by the Vendor pursuant to such Consent Required Contract and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from the Vendor to the Purchaser, together with any fee or other monetary concession approved by the Purchaser and granted in connection with obtaining any Assignment Order for such Consent Required Contract, including all administrative fees and counsel fees of the counterparties required to be paid to obtain such Assignment Order.

“DIP Loan” means the debtor in possession loan made by the Purchaser to the Vendor in the amount of \$700,000, plus any accrued interest and fees pursuant to the DIP Loan Agreement.

“DIP Loan Agreement” means the DIP Term Sheet as approved by the Court in the CCAA Proceedings and as may be amended and restated or modified from time to time.

“Employee Plan” means all:

- (a) contracts, agreements, plans, arrangements or policies (written or oral) providing for incentive compensation, deferred compensation, bonuses, profit-sharing, severance or termination pay, share appreciation, share option, share purchase or other stock related rights relating to the Business; and
- (b) health or other medical benefits (other than the Canadian Pension Plan, the Ontario Health Insurance Plan and other similar health plans established and administered by any other province and workers' compensation insurance provided pursuant to applicable Law), life or other insurance (including any self-insured arrangements), dental, disability, salary continuation, vacation, automobile, supplemental unemployment benefits, post-employment, retirement or supplemental retirement benefits (including compensation, health, medical or life insurance benefits);

which are maintained, administered or contributed to by or on behalf of the Vendor and which covers any employee or former employee of the Vendor.

"Employees" means any and all (i) employees who are actively at work (including full-time, part-time or temporary employees) of the Vendor; and (ii) employees of the Vendor who are on leaves of absence (including maternity leave, parental leave, disability leave, sickness leave and other statutory leaves) as at the Closing Date.

"Encumbrance" means any mortgage, charge, pledge, hypothec, security interest, deemed trust (statutory or otherwise), assignment, lien (statutory or otherwise), leases, rights of way, title defects, options, claim, adverse claims, encumbrances, easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation.

"Excluded Assets" has the meaning specified in Section 2.2.

"Excluded Contracts" means all of the Contracts listed in Schedule 1.1(a) – Excluded Contracts.

"Excluded Liabilities" means any and all liabilities and obligations of the Vendor including, without limitation, liabilities in respect to the Excluded Assets, the Non-Transferred Employee Liabilities and those liabilities listed in Schedule 1.1(b) – Excluded Liabilities.

"Expense Reimbursement" has the meaning specified in Section 7.2(a).

"Governmental Authorities" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (ii) exercising, or entitled or purporting to exercise

any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**HST**” means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada) or any other statute in any jurisdiction of Canada.

“**Intellectual Property**” means all intellectual property of the Vendor used by or currently being developed for use in the Business, and all rights, interests and benefits of the Vendor, through ownership, licensing or otherwise, including without limitation:

- (a) all patents, patent applications and other patent rights, including provisional and continuation patents;
- (b) all registered and unregistered trade-marks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- (c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;
- (d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- (e) industrial designs;
- (f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded;
- (g) any applications or registrations of the foregoing, issued patents, continuations in part, divisional applications or analogous rights therefor, in each case whether registered or not; and
- (h) all Licenses in respect to any intellectual property.

“**Laws**” means any principle of common law and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws; (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any

governmental entity; and (iii) to the extent that they have the force of law, standards, policies, guidelines, notices and protocols of any governmental entity.

“Licenses” means all licenses, sub-licenses and other agreements by or through which other Persons grant the Vendor exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in connection with the Business.

“Monitor’s Certificate” has the meaning specified in Section 9.3.

“Non-Transferred Employee Liabilities” means all liabilities relating to the Non-Transferred Employees, including Wages, vacation pay, termination costs, notice or pay in lieu of notice, severance, wrongful and constructive dismissal damages, human rights claims, all liabilities pursuant to any Employee Plan.

“Non-Transferred Employees” means all Employees who are not Transferred Employees.

“Notice” has the meaning specified in Section 11.1.

“Offerees” has the meaning specified in Section 6.4(a).

“Parties” has the meaning specified in the recitals above.

“Permitted Liens” means any permitted liens set forth in Schedule 1.1(d).

“Person” means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity and pronouns have a similarly extended meaning.

“Priority Payables” has the meaning specified in Section 3.1(a).

“Purchase Price” has the meaning specified in Section 3.1, subject to any change pursuant to Section 3.1.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchaser” has the meaning specified in the preamble above.

“Purchaser Debt” means collectively, all liabilities of the Vendor to the Purchaser estimated to be \$1,079,818.85, as at July 31, 2021, plus interest and costs continuing to accrue.

“RVO” has the meaning specified in Section 7.2(d)(v).

“Sale Process” means the sale solicitation process set forth in Schedule 1.1(c) as approved by the Court on October 7, 2021, as may be amended or otherwise modified from time to time in accordance with the terms therein.

“Sale Process Approval Order” means the Court order approving the Sale Process.

“Successful Bid” has the meaning specified in the Sale Process.

“Successful Bidder” has the meaning specified in the Sale Process.

“Tax Act” means the *Income Tax Act* (Canada), as amended and any relevant legislation of a province imposing tax similar to the *Income Tax Act* (Canada).

“Tax Returns” means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and other documents filed or required to be filed in respect of Taxes.

“Taxes” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies, rates, withholdings, dues, contributions and other charges, collections or assessments of any kind whatsoever; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed on or in respect of amounts of the type described in clause (i) or (ii) above; and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) above as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

“Transferred Employees” means Offerees who accept offers of employment given in accordance with this Agreement from the Purchaser.

“Vendor” has the meaning specified in the recitals above.

“Wages” has the meaning specified in Section 6.4(d).

Section 1.2 References and Usage.

Unless expressly stated otherwise, in this Agreement:

- (a) reference to a gender includes all genders;
- (b) the singular includes the plural and vice versa;
- (c) “or” is used in the inclusive sense of “and/or”;
- (d) “any” means “any and all”;
- (e) the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”;
- (f) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”;
- (g) \$ or dollars refers to the Canadian currency unless otherwise specifically indicated;

- (h) a statute includes all rules and regulations made under it, if and as amended, re-enacted or replaced from time to time;
- (i) a Person includes its predecessors, successors and permitted assigns;
- (j) the term “notice” refers to written notices except as otherwise specified;
- (k) the term “Agreement” and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this Agreement or such other agreement or document as it may have been, or may from time to time be amended, restated, replaced, supplemented or novated and all schedules to it, except as otherwise provided in this Agreement; and
- (l) whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be required to be made or such action will be required to be taken on or not later than the next succeeding Business Day and in the computation of periods of time, unless otherwise stated, the word “from” means “from and excluding” and the words “to” and “until” each mean “to and including”.

Section 1.3 Headings, etc.

The use of headings (e.g. Article, Section, etc.) in this Agreement is reference only and is not to affect the interpretation of this Agreement. References in the Agreement to Article, Section etc., unless otherwise specified, shall mean the applicable Article, Section, etc. of this Agreement.

Section 1.4 Schedules.

The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

Schedule 1.1(a)	Excluded Contracts
Schedule 1.1(b)	Excluded Liabilities
Schedule 1.1(c)	Sale Process
Schedule 2.2(d)	Excluded Assets
Schedule 3.3	Purchase Price Allocation
Schedule 5.1(e)	Priority Amounts

ARTICLE 2 PURCHASE AND SALE

Section 2.1 Purchased Assets.

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor on the Closing Date, on an “as is, where is” basis, all of the Vendor’s right, title and interest in the

Vendor's property, assets and undertakings of every kind and description and wheresoever situate, of the Business, other than the Excluded Assets (collectively, the “**Purchased Assets**”), free and clear of all Encumbrances. Without limiting the foregoing, the Purchased Assets shall include:

- (a) **Equipment and Supplies.** All equipment, furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories and other tangible personal and moveable property (other than inventory) owned by the Vendor and used in connection with the Business;
- (b) **Contracts.** All Assumed Contracts and all rights, title, interests and obligations thereunder;
- (c) **Computer Software.** All software and documentation used in the Business, including, all electronic data processing systems, program specifications, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals;
- (d) **Cash and Accounts Receivable.** All cash in the bank accounts of the Vendor and all accounts receivable (including unbilled revenue from work in progress), bills receivable, contractual hold-backs, trade accounts, trade debts and book debts due or accruing due in connection with the Business, including any refunds and rebates receivable relating to the Business or the Purchased Assets and the full benefit of all security (including cash deposits), guarantees and other collateral held by the Vendor relating to the Business, and amounts receivable (or which may become receivable) by the Vendor under royalty agreements or other agreements or documents related thereto and all bank accounts;
- (e) **Prepaid Expenses.** All prepaid expenses of the Business;
- (f) **Intellectual Property.** All right, title and interest of the Vendor in and to the Intellectual Property owned by or licensed to the Vendor for use in connection with the Business or the Purchased Assets, including domain names and telephone numbers;
- (g) **Books and Records.** The Books and Records of the Vendor related to the Business, the Purchased Assets or the Assumed Liabilities;
- (h) **Claims.** All claims of the Vendor relating to the Business or the Purchased Assets whether choate or inchoate, known or unknown, contingent or otherwise;
- (i) **Tax Refunds.** The proceeds of any and all refundable Taxes payable or paid by the Vendor net of any amounts withheld by any taxing authority, and any claim or right of the Vendor to any refund, rebate, or credit of Taxes;

- (j) **Goodwill.** The goodwill of the Business, including the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor (including all business names related thereto);
- (k) **CASL.** All consents, whether express or implied, granted in favour of the Vendor in accordance with *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada) (commonly known as “**Canada’s Anti-Spam Law**” or “**CASL**”);
- (l) **Insurance.** The interest of the Vendor in: (i) all contracts of insurance, insurance policies and insurance plans which are assets of or maintained in connection with the Purchased Assets; (ii) any insurance proceeds net of any deductibles recovered by the Vendor under all other contracts of insurance, insurance policies (excluding D&O policies) and insurance plans between the date of this Agreement and the Closing Date; and (iii) the full benefit of the Vendor’s rights to insurance claims relating to the Business and amounts recoverable in respect thereof net of any deductible to the extent any of the foregoing are transferable;
- (m) **Warranty Rights.** All warranty rights against manufacturers or suppliers relating to any of the Purchased Assets; and
- (n) **Other Property.** All other property, assets and undertakings of the Vendor of whatever nature or kind used in connection with the Business and/or the Purchased Assets, other than the Excluded Assets.

Section 2.2 Excluded Assets.

The Purchased Assets shall not include any of the following assets (collectively, the “**Excluded Assets**”):

- (a) the Excluded Contracts; and
- (b) the Excluded Assets listed on Schedule 2.2(d).

Section 2.3 Assumed Liabilities.

Subject to this transaction Closing on the Closing Date, the Purchaser agrees to discharge, perform and fulfil the obligations and liabilities of the Vendor with respect to the Purchased Assets that are due and payable or relate to period from and after the Closing Date (the “**Assumed Liabilities**”).

Other than the Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfil any other liabilities, including the Excluded Liabilities.

Section 2.4 Assignment and Assumption of Consent Required Contracts.

- (a) Notwithstanding anything in this Agreement, the Purchaser shall not assume and has no obligation to discharge any liability or obligation under or in respect of any Consent Required Contract unless: (a) the consent, approval or waiver of the party or parties to such Consent Required Contract (other than the Vendor) required to assign such Consent Required Contract has been obtained on terms satisfactory to the Purchaser, acting reasonably and the value of such Consent Required Contract has enured to the Purchaser; or (b) such Consent Required Contract is subject to an Assignment Order.
- (b) The Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consent, approval or waiver of the party or parties to each Consent Required Contract (other than the Vendor) to the assignment of such Consent Required Contract prior to the filing of the motion materials for the Approval and Vesting Order. For greater certainty, neither the Vendor nor the Purchaser is under any obligation to pay any money, incur any obligations, commence any legal proceedings (other than as set forth below with respect to Assignment Orders), or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain any such consent, approval or waiver.
- (c) In the event that the consent, approval or waiver required to assign any Consent Required Contract is not obtained before the date the motion materials are filed for the Approval and Vesting Order, the Vendor shall, at the request of the Purchaser and prior to Closing, seek the Assignment Order for such Consent Required Contract in form and substance satisfactory to the Vendor and the Purchaser, each acting reasonably.
- (d) Subject to Closing, in the event that the consent to assign any Consent Required Contract is not obtained and the Vendor is required to obtain the Assignment Order for one or all of the Consent Required Contracts, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contracts on Closing.

**ARTICLE 3
PURCHASE PRICE**

Section 3.1 Purchase Price.

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets (the “**Purchase Price**”) shall be the aggregate of the following:

- (a) the assignment and assumption of the amount of the DIP Loan advanced by the Purchaser to the Vendor pursuant to the DIP Loan Agreement;

- (b) 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
- (c) the amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).

Section 3.2 Payment of the Purchase Price.

The Purchaser shall pay and satisfy the Purchase Price:

- (a) at Closing, by the payment in cash, or, with the consent of the holder of a Priority Payable, the assumption of, all Priority Payables;
- (b) at Closing, by the assumption of the amount of the DIP Loan owing by the Vendor to the Purchaser;
- (c) at Closing, by the cancellation of the Credit Bid Amount; and
- (d) at Closing, by the assumption of the Assumed Liabilities.

Section 3.3 Purchase Price Allocation.

The Purchase Price shall be allocated among the Purchased Assets in the manner and form set out in Schedule 3.3 – Purchase Price Allocation. Such allocation shall be binding and the Purchaser and Vendor shall report the purchase and sale of the Purchased Assets and file all filings which are necessary or desirable under the Tax Act to give effect to such allocations and shall not take any position or action inconsistent with such allocation.

Section 3.4 No Effect on Other Rights.

The determination of the Purchase Price in accordance with the provisions of this Article will not limit or affect any other rights or causes of action either the Purchaser or the Vendor may have with respect to the representations, warranties or covenants in its favour contained in this Agreement.

**ARTICLE 4
TAX MATTERS**

Section 4.1 Transfer Taxes.

The Purchaser shall be liable for and shall pay all sales Taxes and all other similar Taxes properly payable upon and in connection with the sale, assignment and transfer of the Purchased Assets from the Vendor to the Purchaser, other than any taxes payable on the Vendor’s net income, profits or gains.

Section 4.2 Tax Elections.

The Parties shall use their commercially reasonable efforts in good faith to minimize (or eliminate) any taxes payable under the *Excise Tax Act* (Canada) in respect of the Closing by, among other things, making such elections and taking such steps as may be provided for under that Act, including, for greater certainty, making a joint election in a timely manner under Section 167 of that Act, under Section 22 of the Tax Act and under Subsections 20(24) and 20(25) of the Tax Act (and the corresponding sections of any provincial legislation) as may reasonably be requested by the Purchaser in connection with the Closing.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations and Warranties of the Vendor.

The Vendor represents and warrants as follows to the Purchaser and acknowledges and agrees that the Purchaser is relying upon the representations and warranties in connection with its purchase of the Purchased Assets and its assumption of the Assumed Liabilities.

- (a) **Incorporation and Qualification.** The Vendor is a corporation incorporated and existing under the laws of jurisdiction of its formation. The Vendor has the corporate power and authority to own and operate its property, carry on its business and, subject to Court approval, enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party.
- (b) **Corporate Authorization.** Subject to the issuance of the Approval and Vesting Order, the execution and delivery of and performance by the Vendor of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary and corporate action on the part of each of them.
- (c) **Execution and Binding Obligation.** Subject to the issuance of the Approval and Vesting Order, this Agreement and each of the Ancillary Agreements to which the Vendor is a party have been duly executed and delivered by the Vendor and constitute legal, valid and binding agreements of it, enforceable against it in accordance with their respective terms.
- (d) **Residence of the Vendor.** The Vendor is not a non-resident of Canada within the meaning of the *Tax Act*. The Vendor is not a non-Canadian within the meaning of the *Investment Canada Act*.
- (e) **HST Registrant.** The Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada).
- (f) **Taxes.** The Vendor has, in accordance with applicable Laws, invoiced, collected, withheld, reported and remitted to the appropriate tax authority all Taxes which are due and payable by the Vendor. There are no liens for Taxes

(other than Permitted Liens) against the Purchased Assets. None of the Purchased Assets is the subject of any trust (other than a Permitted Lien) arising under any Law relating to Taxes.

Section 5.2 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants as follows to the Vendor and acknowledges and agrees that the Vendor is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) **Incorporation and Corporate Power.** The Purchaser is an entity that is duly formed and validly existing under the laws of the jurisdiction of its formation, has full power and capacity to own the Purchased Assets and to carry on the Business as now conducted has the power and authority to enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party.
- (b) **Corporate Authorization.** The execution and delivery of and performance by the Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated by them have been duly authorized by all necessary action on the part of the Purchaser.
- (c) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and constitute legal, valid and binding agreements of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **HST Registrant.** The Purchaser will be as at Closing, a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada).

Section 5.3 No Other Representations or Warranties.

The representations and warranties given by the Vendor in Section 5.1 are the only representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Vendor in Section 5.1, the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis and does not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever by the Vendor or the Monitor, whether express or implied (by operation of law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding any of the assets to be acquired or any of the liabilities to be assumed or the completeness of any information provided in connection therewith. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description,

fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets, the Business, or the Assumed Liabilities.

Section 5.4 AS IS, WHERE IS.

THE PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE PURCHASER “**AS IS, WHERE IS**” AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS, AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO ANY OF THE VENDOR, THE MONITOR OR ANY OF THEIR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR FRAUD, GROSS NEGLIGENCE OR WILFULL MISCONDUCT.. THE PURCHASER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS, AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE PURCHASER’S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO ANY OF THE VENDOR OR THE MONITOR, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Purchaser acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Vendor or Monitor in this Agreement or in any instrument furnished in connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, operate, merchantability, quantity, condition, ownership, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are hereby expressly excluded.

**ARTICLE 6
PRE-CLOSING COVENANTS OF THE PARTIES**

Section 6.1 Access by Purchaser.

Subject to applicable Law, from the date that this Agreement is selected, or deemed to be selected as, the Successful Bid in accordance with the Sale Process until the Closing, the Vendor shall upon reasonable notice, permit the Purchaser and its partners and Affiliates, its and their respective employees, agents, counsel, accountants or other representatives, lenders, potential lenders and potential investors to have reasonable access during normal business hours to (i) the premises of the Vendor; (ii) the Purchased Assets, including all Books and Records and all minute books and corporate records of the Vendor using commercially reasonable efforts; (iii) the Assumed Contracts; and (iv) furnish to the Purchaser or its partners,

employees, agents, counsel, accountants or other representatives, lenders, potential lenders and potential investors such financial and operating data and other information with respect to the Purchased Assets and the Vendor (to the extent such data or information is in the Vendor's possession or, using commercially reasonable efforts, can be obtained by the Vendor or the Monitor) as the Purchaser from time to time reasonably requests.

Section 6.2 Access by Monitor.

From the Closing Date, the Purchaser shall, upon reasonable notice, permit representatives of the Monitor to have reasonable access during normal business hours to the Books and Records for the purpose of completing its mandate as the Monitor from time to time reasonably requests.

Section 6.3 Title and Risk.

The Purchased Assets shall remain at the risk of the Vendor until Closing and at the risk of the Purchaser from and after Closing. The Vendor covenants to the Purchaser that, during the period from and including the date hereof through and including the Closing Date or the earlier termination of this Agreement, the Vendor shall use commercially reasonable efforts to conduct the Business in substantially the same manner as conducted as of the date hereof.

Section 6.4 Employees.

- (a) The Purchaser shall, prior to the Closing Date, offer employment conditional on Closing and effective as of the Closing Date to all of the Employees whom the Purchaser wishes, in its sole discretion (subject to the requirements of applicable Law, if any), to employ after the Closing (collectively, the "Offerees") on such employment terms and conditions as the Purchaser considers appropriate or as may be required in accordance with applicable Law.
- (b) At least two (2) Business Days prior to the Closing Date, the Purchaser shall provide the Vendor and the Monitor with a schedule setting forth a list of the names of all Offerees.
- (c) The Vendor shall terminate the employment of all Employees no later than the Closing.
- (d) Prior to the Closing Date, the Vendor shall process, or cause to be processed, the payroll for, and pay (or cause to be paid), all compensation, including the base wages, base salary, vacation pay and ordinary course sales commissions for all Employees (collectively, "Wages") as and when due for the period prior to Closing. The Vendor shall withhold and remit all applicable payroll taxes and deductions from Wages at source as required by Law.
- (e) Following the Closing, the Purchaser shall process the payroll for, and pay (or cause to be paid), as and when due, (i) all unpaid Wages accrued but which did not become due prior to the Closing Date with respect to each Transferred

Employee; and (ii) all Wages accrued on and after the Closing Date with respect to each Transferred Employee.

- (f) All Non-Transferred Employee Liabilities shall be dealt with in the CCAA Proceedings or any subsequent bankruptcy of the Vendor in accordance with the entitlement and priority afforded to such claims under applicable Law. The Purchaser shall not assume or be liable for any Non-Transferred Employee Liabilities.

Section 6.5 Notices and Requests for Consents.

- (a) Subject to the selection or deeming of this Agreement as the Successful Bid in accordance with the Sale Process, the Vendor shall use its commercially reasonable efforts to obtain or cause to be obtained prior to Closing, at its expense, all consents, approvals and waivers that are required by the terms of the Consent Required Contracts, or an Assignment Order in order to complete the transactions contemplated by this Agreement.
- (b) The Vendor and the Monitor shall provide notices (in form and substance acceptable to the Purchaser, acting reasonably) that are required by the terms of the Assumed Contracts in connection with the transaction contemplated pursuant to the Approval and Vesting Order and this Agreement.

Section 6.6 Transfer of the Purchased Assets.

The Vendor shall take all necessary steps and proceedings to permit title to the Purchased Assets to be duly and validly transferred and assigned to the Purchaser at the Closing pursuant to the Approval and Vesting Order and this Agreement, free from all Encumbrances.

Section 6.7 Actions to Satisfy Closing Conditions.

- (a) The Vendor shall use its commercially reasonable efforts to take or cause to be taken all such actions so as to ensure compliance with all of the conditions set forth in Section 8.1.
- (b) The Purchaser shall use its commercially reasonable efforts to take or cause to be taken all such actions so as to ensure compliance with all of the conditions set forth in Section 8.2.

ARTICLE 7 SALES PROCESS

Section 7.1 Compliance with Sale Process.

The Parties each agree to comply with the Sale Process.

Section 7.2 Expense Reimbursement.

- (a) In consideration for the Purchaser's expenditure in the preparation of this Agreement, and in performing due diligence with respect to the Vendor and the Purchased Assets, if this Agreement is terminated pursuant to Section 10.1(1) or Section 10.1(2)(b), then the Vendor shall reimburse the Purchaser for its expenses reasonably incurred in connection with this Agreement up to a maximum amount of \$25,000 (the "**Expense Reimbursement**").
- (b) The Purchaser agrees that the Expense Reimbursement will be the sole and exclusive remedy of the Purchaser against the Vendor in the event that this Agreement is terminated pursuant to Section 10.1(1) or Section 10.1(2)(b).
- (c) If the Purchaser is not selected as, or deemed to be, the Successful Bidder, the Vendor shall request that the order of the Court approving the sale of the assets of the Vendor to the Successful Bidder to include a provision requiring that the Expense Reimbursement be paid to the Purchaser in accordance with the Sale Process and that the payment of the Expense Reimbursement be approved as part of such sale and not be voidable as a matter of bankruptcy law or otherwise.
- (d) The Vendor shall seek the approval of the Court to the transactions contemplated by this Agreement in accordance with the following:
 - (i) Promptly upon execution of this Agreement, the Vendor shall seek approval of the (i) Sale Process; (ii) filing of this Agreement as a "stalking horse bid"; and (iii) the Expense Reimbursement.
 - (ii) The Vendor and the Purchaser acknowledge that: (i) this Agreement and the transactions contemplated herein are subject to Court approval; and (ii) Closing the transactions contemplated herein is subject to this Agreement being determined to be the Successful Bid in accordance with the Sale Process and to the issuance of the Approval and Vesting Order or RVO, as applicable.
 - (iii) As soon as practicable if the Purchaser is selected as, or deemed to be, the Successful Bidder, the Vendor shall file motion materials seeking the issuance of the Approval and Vesting Order or RVO, as applicable.
 - (iv) If the Purchaser is selected, or deemed to be selected as the Successful Bidder, as soon as practicable, the Purchaser shall advise the Vendor and the Monitor in writing of the Consent Required Contracts for which the Purchaser requires the Vendor to seek an Assignment Order.
 - (v) The Vendor and the Purchaser shall cooperate with filing and serving the motion for issuance and entry of the Approval and Vesting Order and any Assignment Orders required pursuant to Section 2.4(c). If determined to be necessary by the Purchaser, the Vendor shall cooperate to obtain a reverse vesting order (the "**RVO**") pursuant to which the Purchaser shall acquire the shares of the Vendor and the liabilities of the Vendor, other than the Assumed Liabilities, shall be vested to a newly

incorporated company such that the Vendor shall be cleansed of all such liabilities.

- (vi) The Vendor, in consultation with the Purchaser, shall determine all Persons required to receive notice of the motions for the Approval and Vesting Order, Assignment Order or the RVO, as applicable under applicable Laws and the requirements of the CCAA, the Court and any other Person determined necessary by the Vendor or the Purchaser.

ARTICLE 8 CONDITIONS OF CLOSING

Section 8.1 Conditions for the Benefit of the Purchaser.

The purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities are subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) **Successful Bid.** The Purchaser shall have been selected as, or deemed to be, the Successful Bidder, following the completion of the Sale Process.
- (b) **Truth of Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement were true and correct, in all material respects, as of the date of this Agreement and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Vendor shall have executed and delivered a certificate of a senior officer to that effect. Upon the delivery of such certificate, the representations and warranties of the Vendor in Section 5.1 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (c) **Performance of Covenants.** The Vendor shall have fulfilled or complied, in all material respects, with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing, and the Vendor shall have executed and delivered a certificate of an authorized representative to that effect.
- (d) **Consents for Consent Required Contracts.** All consents, approvals or waivers for each Consent Required Contract shall have been obtained on terms acceptable to the Purchaser, acting reasonably, or an Assignment Order will have been obtained in respect thereof. All such consents, approvals, waivers or Assignment Orders will be in force and will not have been modified, rescinded, appealed or stayed.
- (e) **No Bankruptcy:** The Vendor shall not be and shall not have become a bankrupt under the BIA.

- (f) **Legal Action.** There shall be no order issued by any Governmental Authority delaying, restricting or preventing consummation of the transactions contemplated herein.
- (g) **Deliveries.** The Vendor shall have delivered or caused to be delivered to the Purchaser the following in form and substance satisfactory to the Purchaser acting reasonably:
 - (i) consents to the assignment of the Consent Required Contracts to the extent that an Assignment Order was not obtained;
 - (ii) the certificates referred to in Section 8.1(b) and Section 8.1(c);
 - (iii) the issued and entered Approval and Vesting Order or RVO as applicable, which order shall not have been modified, rescinded, appealed or stayed;
 - (iv) a copy of the Monitor's Certificate (such certificate shall be filed with the Court by the Monitor following Closing and a copy of such filed Monitor's Certificate shall be delivered to the Purchaser promptly thereafter);
 - (v) the originals of the Books and Records, excluding those Excluded Assets but including all Tax Returns pertaining to corporate income Taxes of the Vendor for the previous 5 years from the Closing Date, that are available to the Vendor using commercially reasonable efforts;
 - (vi) the Purchased Assets, which shall be delivered in *situ*, other than the cash held in the Vendor's bank accounts on the Closing Date, which shall be transferred to the Purchaser; and
 - (vii) an assignment and assumption agreement, bill of sale or such other conveyances, assignments, documents and instruments of transfer as may be reasonably required by the Purchaser to complete the transaction contemplated herein.

Section 8.2 Conditions for the Benefit of the Vendor.

The purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities are subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion.

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement were true and correct, in all material respects, as of the date of this Agreement as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and the Purchaser shall have executed and

delivered a certificate of a senior officer to that effect. Upon delivery of such certificate, the representations and warranties of the Purchaser in Section 5.2 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.

- (b) **Performance of Covenants.** The Purchaser shall have fulfilled or complied, in all material respects, with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to Closing and the Purchaser shall have executed and delivered a certificate of a senior officer to that effect.
- (c) **Deliveries.** The Purchaser shall have delivered or caused to be delivered to the Vendor the following in form and substance satisfactory to the Vendor, acting reasonably:
 - (i) all resolutions of the board of directors of the Purchaser approving the entering into and completion of the transactions contemplated by this Agreement and the Ancillary Agreements;
 - (ii) a certificate of status, compliance, good standing or like certificate with respect to the Purchaser issued by appropriate government official of the jurisdiction of its incorporation; and
 - (iii) the certificates referred to in Section 8.2(a) and Section 8.2(b).
- (d) **Proceedings.** All proceedings to be taken in connection with the transactions contemplated in this Agreement and any Ancillary Agreement are reasonably satisfactory in form and substance to the Vendor, acting reasonably, and the Vendor shall have received copies of all the instruments and other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.
- (e) **Legal Action.** There shall be no order issued by any Governmental Authority delaying, restricting or preventing consummation of the transactions contemplated herein.

Section 8.3 Conditions for the Benefit of the Purchaser and the Vendor.

The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the benefit of both the Vendor and the Purchaser and may be jointly waived, in whole or in part, by the Vendor and the Purchaser.

- (a) **Approval and Vesting Order.** The Approval and Vesting Order shall have been obtained and shall not have been appealed, set aside, varied or stayed or, if appealed or stayed, all appeals shall have been dismissed and all stays shall have been lifted, respectively.

- (b) **Monitor's Certificate.** The Monitor shall have delivered the Monitor's Certificate confirming the satisfaction of all conditions under this Agreement, payment of the Purchase Price and the vesting of the Purchased Assets pursuant to the Approval and Vesting Order.

ARTICLE 9 CLOSING

Section 9.1 Date, Time and Place of Closing.

Closing will take place on the Closing Date by exchanging signature pages of the Parties electronically or at the offices of counsel to the Vendor in Toronto, Ontario, or at such other place, on such other date and at such other time as may be consented to by the Monitor and agreed upon in writing between the Vendor and the Purchaser.

Section 9.2 Closing Procedures.

Subject to satisfaction or waiver by the relevant Party of the conditions of closing, on the Closing Date, the Closing shall be deemed completed upon the delivery of the Monitor's Certificate.

Section 9.3 Monitor's Certificate.

The Parties hereby acknowledge and agree that the Monitor shall be entitled to file a certificate, substantially in the form attached to the Approval and Vesting Order or RVO, as applicable (the "**Monitor's Certificate**"), with the Court upon receiving written confirmation from the Purchaser and the Vendor that all conditions of Closing have been satisfied or waived.

ARTICLE 10 TERMINATION

Section 10.1 Termination Rights.

- (1) This Agreement will be terminated automatically, without any action by either Party, if:
- (a) this Agreement is not selected as the Successful Bid pursuant to and in accordance with the terms of the Sale Process; or
 - (b) if the Approval and Vesting Order or RVO, as applicable, is not granted by January 23, 2022, or such later date as may be agreed to be the Parties.
- (2) This Agreement may, by Notice in writing given on or prior to the Closing Date, be terminated:
- (a) by mutual consent of the Vendor and the Purchaser;
 - (b) by the Purchaser, if:

- (i) there has been a material breach of this Agreement by the Vendor and where such breach is capable of being cured, such breach has not been waived by the Purchaser in writing or cured within 15 days following written Notice of such breach by the Purchaser; or
 - (ii) any of the conditions in Section 8.1 have not been satisfied and it becomes reasonably apparent that any of such conditions will never be satisfied (other than as result of the failure of the Purchaser to perform any of its material obligations) and the Purchaser has not waived such condition in writing at or prior to Closing;
- (c) by the Vendor, if:
- (i) there has been a material breach of this Agreement by Purchaser and where such breach is capable of being cured, such breach has not been waived by the Vendor in writing or cured within 15 days following written Notice of such breach by the Vendor; or
 - (ii) any of the conditions in Section 8.2 have not been satisfied and it becomes reasonably apparent that any of such conditions will never be satisfied (other than as result of the failure of the Vendor to perform any of its material obligations) and the Vendor has not waived such condition in writing at or prior to Closing.

Section 10.2 Effect of Termination.

The rights of termination under this Article 10 are, subject to Section 7.2(b), in addition to any other rights the respective Party may have under this Agreement or otherwise, and the exercise of a right of termination by a Party will not constitute an election of remedies. If this Agreement is terminated pursuant to Section 10.1, this Agreement will be of no further force or effect; provided, however, that Section 7.2(b) (*Expense Reimbursement*), this Section 10.2 (*Effect of Termination*), and Article 11 (*Miscellaneous*) and provisions that by their nature should survive, will survive the termination of this Agreement.

ARTICLE 11 MISCELLANEOUS

Section 11.1 Notices.

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a “**Notice**”) must be in writing, sent by personal delivery, courier or email addressed:

- (a) to the Purchaser at:
Asset Profits Limited
Vistra Corporate Service Centre,
Wickhams Cay II, Road Town Tortola,

VG1110,
British Virgin Islands

Attn: Michael Cheng
Email: mcheng.pacificlifesc@gmail.com

with a copy by email to:

LLF Lawyers LLP
332 Aylmer Street North
P.O. Box 1146
Peterborough, ON
K9J 7H4

Attn: Le Nguyen
Email: lnguyen@llf.ca

(b) to the Vendor at:

Medifocus Inc.
10240 Old Columbia Rd. Suite G,
Columbia, MD, USA
21046

Attn: Dr. Raymond Tong, Director
Email: rtong@asia-hmi.com

with a copy by email to:

Weisz Fell Kour LLP
200 Bay Street, Suite 2305
Toronto, Ontario
M5J 2J3

Attn: Caitlin Fell and Shaun Parsons
Email: cfell@wfkllaw.ca / sparsons@wfkllaw.ca

(c) to the Monitor at:

msi Spergel Inc.
505 Consumers Road, Suite 200
Toronto, Ontario
M2J 4V8

Attn: Mukul Manchanda, Managing Partner
Email: mmanchanda@spergel.ca

with a copy by email to:

Aird & Berlis LLP

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario
M5J 2T9

Attn: Kyle Plunkett
Email: kplunkett@airdberlis.com

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day; or (ii) if sent email, on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party.

Section 11.2 Time of the Essence.

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

Section 11.3 Third Party Beneficiaries.

Except as otherwise provided in this Agreement, (i) the Vendor and the Purchaser intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties; and (ii) no Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person.

Section 11.4 Expenses.

Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses (including the fees and expenses of legal counsel, accountants and other advisors) incurred in connection with this Agreement or any Ancillary Agreements and the transactions contemplated by them.

Section 11.5 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.

Section 11.6 Waiver.

No waiver of any of the provisions of this Agreement or any Ancillary Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's acceptance of any certificate delivered on Closing or failure or delay in exercising any right under this Agreement will not operate as a waiver of that. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

Section 11.7 Entire Agreement.

This Agreement and the other documents executed in connection herewith constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

Section 11.8 Successors and Assigns.

- (1) Upon execution of the Agreement by the Parties, it will be binding upon and enure to the benefit of the Vendor, the Purchaser and their respective successors and permitted assigns.
- (2) Except as provided in this Section 11.8, neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party. Upon giving Notice to the Vendor at any time on or prior to the Closing Date, the Purchaser may assign this Agreement or any of its rights and/or obligations under this Agreement to any of its Affiliates, provided that such Affiliate and the Purchaser shall be jointly and severally liable with respect to all of the obligations of the Purchaser, including the representations, warranties, covenants, indemnities and agreements of the Purchaser.

Section 11.9 Severability.

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

Section 11.10 Governing Law and Jurisdiction.

- (1) This Agreement is governed by and will be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Court (and appellate courts therefrom) and waives objection to the venue of any proceeding in such court or that such court provides an inappropriate forum.

Section 11.11 Counterparts.

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF the Parties have executed this Asset Purchase Agreement.

ASSET PROFIT LIMITED

By:

Authorized Signing Officer

MEDIFOCUS INC.

By:

Authorized Signing Officer

SCHEDULES

Schedule 1.1(a) – Excluded Contracts

The lease as between Medifocus Inc. and Oekos Rivers Columbia, LLC dated November 14, 2012, as amended from time to time.

Schedule 1.1(b) – Excluded Liabilities

Any Liabilities in relation to the Excluded Assets.

Schedule 1.1(c) – Sale Process

See Attached.

Schedule 2.2(d) – Excluded Assets

The Excluded Assets shall include:

- (a) the rights of Vendor under this Agreement; and
- (b) all rights under or arising out of insurance policies not relating to the Business or the Purchased Assets or non-assignable as a matter of law.

Schedule 3.3 – Purchase Price Allocation

To be agreed upon as between the Purchaser and the Vendor.

Schedule 5.1(e) – Priority Amounts

- (1) Any amounts owing by the Vendor on account of the court-ordered charges in the CCAA Proceedings or BIA proceedings; and
- (2) Any amounts owing by the Vendor on account of source deductions.

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

Court File No. 31-2764805

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

**FIRST REPORT OF MSI SPERGEL
INC. AS PROPOSED CCAA
MONITOR OF MEDIFOCUS INC.
DATED OCTOBER 5, 2021**

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