

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

THE HONOURABLE MR ) THURSDAY, THE 7<sup>TH</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF OCTOBER, 2021

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

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

**INITIAL ORDER**

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

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

## **SERVICE**

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

## **CONTINUANCE UNDER THE CCAA**

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

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

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

## **PLAN OF ARRANGEMENT**

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

## **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

## **RESTRUCTURING**

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

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

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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



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

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

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

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

### **NON-DEROGATION OF RIGHTS**

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

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

### **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

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

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

## **DIP FINANCING**

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

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

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

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

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

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

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



## VALIDITY AND PRIORITY OF CHARGES

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

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

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

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

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

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

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

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

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

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

### **SALE PROCESS**

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

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

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

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

## SERVICE AND NOTICE

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

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

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

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

## **GENERAL**

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

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

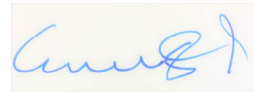
52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this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

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

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

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

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



Digitally signed by  
Mr. Justice Cavanagh

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## 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:

<b>Milestones</b>	<b>Deadline</b>
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 (“ <b>APA</b> ”) with a comparison to the Stalking Horse Bid.	November 22, 2021
Sale Approval Motion	To be determined by the Monitor
Closing Date	Within ten (10) Business Days of the Court Approval of the Transaction

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

### **Publication Notice**

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



## **Solicitation of Interest**

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

## **Free of Any and all Claims and Interests**

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

## **“As Is, Where Is”**

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

## **Participation Requirements**

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

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

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

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

### **Due Diligence**

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

### **Bid Deadline**

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

### **Binding APA**

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

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

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

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

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

### **Evaluation of Binding APA**

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

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

### **Selection of Successful APA**

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

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

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

### **Sale Approval Motion Hearing**

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

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

### **Reservation of Rights**

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

### **Miscellaneous**

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

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

**Limitation of Liability**

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

## Schedule "A"

### Form of Non-Disclosure Agreement

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

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

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

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

Proceedings commenced at Toronto

**INITIAL ORDER**

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