

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

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

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

**MOTION RECORD**

(RE: Transaction Approval, Reverse Vesting Order, Stay Extension, Monitor’s  
Approvals, and CCAA Termination)

February 2, 2022

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**Lawyers for Medifocus Inc.**

**TO: THE SERVICE LIST**

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

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

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

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# Tab 1



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

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

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

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

**NOTICE OF MOTION**

(RE: Transaction Approval, Reverse Vesting Order, Stay Extension, Monitor’s Approvals, and  
CCAA Termination)

**MEDIFOCUS INC.** (“**Medifocus**” or the “**Applicant**”) will make a motion to a Judge presiding over the Commercial List on **February 8, 2022 at 11:30 a.m.**, or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto and advise if you intend to join the motion by emailing Levi Rivers at [lrivers@wfklaw.ca](mailto:lrivers@wfklaw.ca).

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- ☐ in writing under subrule 37.12.1 (1);
- ☐ in writing as an opposed motion under subrule 37.12.1 (4);
- ☐ in person;
- ☐ By telephone conference;
- ☒ By video conference.

### Schedule “A”

Join Zoom Meeting

<https://us02web.zoom.us/j/82829397484>

Meeting ID: 828 2939 7484

One tap mobile

+15873281099,,82829397484# Canada

+16473744685,,82829397484# Canada

Dial by your location

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

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Meeting ID: 828 2939 7484

Find your local number: <https://us02web.zoom.us/j/82829397484>

**THE MOTION IS FOR:**

1. An Order, substantially in the form attached at Tab 5, among other things:
  - a) declaring that a company to be incorporated (“**ResidualCo**”):
    - i. is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c C-36 (the “**CCAA**”) applies;
    - ii. is an Applicant in these CCAA proceedings; and
    - iii. is added to the style of cause in these proceedings;
  - b) approving a reverse vesting of specified liabilities of Medifocus to ResidualCo;
  - c) approving a corporate reorganization pursuant to which Asset Profits Limited or its permitted assignee (“**PurchaseCo**”) will subscribe for shares in Medifocus and all other shares in the capital of Medifocus will be cancelled with the effect that PurchaseCo will become the sole shareholder of Medifocus (the “**Reorganization Transaction**”);
  - d) extending the Stay Period (as defined below) up to and including March 15, 2022;
  - e) approving the activities of msi Spergel Inc. (the “**Monitor**”) as described in the Third Report of the Monitor, to be filed (the “**Third Report**”);
  - f) approving the fees and disbursements of the Monitor and its counsel to date, as described in the fee affidavits attached to the Third Report;

- g) terminating these CCAA proceedings upon the filing of a certificate of the Monitor confirming, *inter alia*, the consummation of the Reorganization Transaction (the “**Discharge Certificate**”);
  - h) releasing Medifocus, the Monitor, the Monitor’s legal counsel, legal counsel for the Applicant upon filing the Discharge Certificate;
  - i) discharging msi Spergel Inc. in its capacity as Monitor in these CCAA proceedings upon the filing of the Discharge Certificate; and
2. Such further and other relief as may be requested and this Honorable Court may deem just;

**THE GROUNDS FOR THIS MOTION ARE:**

*Overview*

- 3. Medifocus is engaged in the research, development and sale of medical device systems that deliver focused microwave-generated heat to diseased tissue, thereby shrinking or destroying the targeted tissue;
- 4. Medifocus holds regulatory federal regulatory approvals from the United States Food and Drug Administration (the “**FDA**”) and equivalent approvals in Hong Kong, Thailand, Malaysia, South Korea, and Singapore (the “**Asia Approvals**”) for certain medical devices;
- 5. Medifocus’ common shares were previously traded on the Toronto Stock Exchange (“**TSX**”) under the trading symbol “MFS” and the OTC Markets under the trading symbol “MDFZF”. On September 4, 2020, the Ontario Securities Commission issued a cease trade order (the “**Cease Trade Order**”) for the shares of the Applicant due to the failure to file required public disclosure;

6. Medifocus filed a Notice of Intention to Make a Proposal (“**NOI**”) on September 8, 2021, and msi Spergel Inc. (“**MSI**”) was appointed as the proposal trustee;
7. On October 7, 2021, the Honourable Justice Cavanagh granted an Order (the “**Initial Order**”) converting the NOI proceedings into a proceeding under the CCAA and MSI was appointed as the Monitor;
8. The Initial Order provided for, among other things: (i) a stay of all proceedings against the Applicant until and including January 7, 2022 (the “**Stay Period**”, as subsequently extended until and including February 8, 2022, by the Order of the Honourable Justice McEwen dated January 7, 2022); and (ii) approval of a stalking horse sale process led by the Monitor (the “**Sale Process**”);
9. The Sale Process for the Applicant contemplated that the Applicant would enter into a conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) with the Applicant’s secured creditor, Asset Profits Limited as stalking horse bidder (the “**Stalking Horse Bidder**”) and that any interested bidders would be required to submit a bid for the purchase of the assets of Medifocus on terms superior to the Stalking Horse Agreement;

*The Completion of the Sale Process*

10. During the pendency of the Sale Process, three potential bidders expressed interest in purchasing the Applicant’s assets. Two of the potential bidders signed non-disclosure agreements and received access to a virtual data room;
11. No bids except for the Stalking Horse Agreement were received by November 22, 2021, being the bid deadline for the submission of all bids (the “**Bid Deadline**”);

12. As no other bids were received by the Bid Deadline, the Stalking Horse Bidder was determined to be the successful bidder;

*The Proposed Reorganization and Reverse Vesting Transaction*

13. In accordance with the Sale Process, Medifocus is bound to complete a transaction with the Stalking Horse Bidder;
14. Notwithstanding that the Stalking Horse Agreement contemplated a purchase of the Applicant's assets by the Stalking Horse Bidder, the Stalking Horse Agreement provided for the option for the Stalking Horse Bidder (hereinafter referred to as PurchaseCo) to instead complete the transaction by way of a Reverse Vesting Order;
15. Accordingly, the Applicant will, subject to Court approval, proceed with the Reorganization Transaction and reverse vesting in order to preserve the FDA Approvals and the Asia Approvals (the "**Reorganization and Reverse Vesting Transaction**"). As described below, the effect of the Reorganization and Reverse Vesting Transaction, including its effect on creditors and stakeholders, is the same as a typical asset sale using an approval and vesting order;
16. The Applicant seeks approval of the Reorganization and Reverse Vesting Transaction, which is to be effected pursuant to the following steps. Following the incorporation of a new company under the *Business Corporations Act*, R.S.O. 1990, c. B.16 ("**ResidualCo**"):
  - a) all of the liabilities of Medifocus other than certain assumed liabilities (such as priority payables, if any) shall be transferred and vested in ResidualCo;

- b) Medifocus shall apply to the OSC for a partial lifting of the Cease Trade Order in order to facilitate the subscription by PurchaseCo of shares in Medifocus;
  - c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common shares that are issued as described in subparagraph 16(d) below); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo;
  - d) PurchaseCo shall subscribe for new shares of Medifocus via private placement to be coordinated with the TSX (the “**Subscription**”). The consideration for the Subscription of shares of Medifocus shall be a credit bid of the debt of PurchaseCo (which credit bid was originally contemplated in the Stalking Horse Agreement);
  - e) all equity interests, compensation plans and other securities in Medifocus, other than the interest of PurchaseCo, shall be cancelled for no consideration, such that PurchaseCo becomes the sole shareholder of Medifocus; and
  - f) Medifocus shall apply to the Ontario Securities Commission in order to cease to be a reporting issuer, including full revocation of the Cease Trade Order;
17. Once these transaction steps are completed, upon the service and filing of the Discharge Certificate, MSI will be discharged as Monitor and these CCAA proceedings terminated;

18. The result of the Reorganization and Reverse Vesting Transaction is consistent with the result of an asset purchase and vesting order as contemplated in the Stalking Horse Agreement;
19. Under the Stalking Horse Agreement, substantially all of the assets of Medifocus would have been vested out to PurchaseCo, leaving behind all liabilities other than the Assumed Liabilities. Pursuant to the Reorganization and Reverse Vesting Transaction, all liabilities other than Assumed Liabilities are instead vested out into a new corporate entity (ResidualCo) while the assets, including the FDA Approvals and the Asia Approvals, are maintained in Medifocus;
20. The reverse vesting structure will provide the following benefits and efficiencies:
  - a) allow PurchaseCo to acquire Medifocus as a going concern;
  - b) preserve non-transferable FDA Approvals and Asia Approvals;
  - c) maintain existing relationships with suppliers and manufacturers; and
  - d) avoid the need to transfer any contracts.

*Extension of Stay Period*

21. The Applicant and PurchaseCo will not be able to complete the Reorganization and Reverse Vesting Transaction before the expiry of the current Stay Period, being February 8, 2022;
22. The Reorganization and Reverse Vesting Transaction will require additional time to complete as compared with an asset purchase and vesting order, particularly to ensure



compliance with securities regulations and to complete the necessary steps to lift the Cease Trade Order;

23. The Monitor has reviewed the terms of the proposed transaction and supports the implementation of the Reorganization and Reverse Vesting Transaction. Accordingly, the Monitor also supports the extension of the Stay Period;
24. The Applicant has and continues to act in good faith and with due diligence in its efforts to restructure in a manner that will yield the greatest recovery for its creditors and other stakeholders;
25. For the foregoing reasons, the stay extension is appropriate;

*Approval of Monitor's Activities and Fees*

26. The Third Report includes detailed descriptions of the fees and disbursements to date of the Monitor and its counsel, Aird & Berlis LLP;
27. The Monitor is of the view that its fees and disbursements and the fees and disbursements of Aird & Berlis LLP as described in the Third Report are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Initial Order. Further, the Monitor believes that the hourly rates charged by Aird & Berlis LLP are consistent with the rates charged by corporate law firms practicing in the area of corporate insolvency and restructuring in Toronto;

*Further Grounds*

28. The provisions of the CCAA, including sections 2, 3, 6, 11, 11.02, and 36;

29. Section 106 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
30. Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended;
31. The inherent and equitable jurisdiction of this Honourable Court; and
32. Such further and other grounds as counsel may advise and this Honorable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:**

33. The Affidavit of Raymond Tong, sworn February 2, 2022, and the exhibits attached thereto;
34. The Third Report of the Monitor, to be filed; and
35. Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 2, 2022

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**Lawyers for Medifocus Inc.**

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

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

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**NOTICE OF MOTION**

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# Tab 2

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

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

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**AFFIDAVIT OF RAYMOND TONG**

(Sworn February 2, 2022)

I, **RAYMOND TONG**, of the City of Hong Kong, **MAKE OATH AND SAY:**

1. I am a director of the Applicant, Medifocus Inc. (the "**Applicant**" or "**Medifocus**"). Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and believe it to be true.
2. Medifocus is engaged in the research, development and sale of medical devices that deliver focused microwave-generated heat to diseased tissue, thereby shrinking or destroying the targeted tissue.
3. Medifocus' common shares were previously traded on the Toronto Stock Exchange ("**TSX**") under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". On September 4, 2020, the Ontario Securities Commission issued a cease trade order (the "**Cease Trade Order**") for the shares of the Applicant due to certain failures in periodic disclosure caused by cash flow restrictions.

4. On September 8, 2021, Medifocus filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), and msi Spergel Inc. (“**MSI**”) was appointed as the proposal trustee (in such capacity, the “**Proposal Trustee**” and, following continuation under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), in such capacity, the “**Monitor**”). Attached hereto and marked as **Exhibit “A”** is a copy of the Certificate of Filing of a Notice of Intention to Make a Proposal that was filed commencing the NOI proceedings.

5. On October 7, 2021, Justice Cavanagh granted an Initial Order continuing Medifocus’ NOI proceedings under the CCAA (the “**Initial Order**”). Among other things, the Initial Order appointed MSI as Monitor of the Applicant and approved interim financing secured by a priority charge up to a maximum of \$700,000 (the “**DIP Facility**”) in favour of Asset Profits Limited (the “**Stalking Horse Bidder**” or the “**Purchaser**” as the case may be).

6. In addition, the Court approved a stalking horse sale process (the “**Sale Process**”) in order to solicit bids for the purchase of the business and assets of Medifocus that were superior to the bid submitted by the Stalking Horse Bidder pursuant to the stalking horse asset purchase agreement executed between the Stalking Horse Bidder and Medifocus (the “**Stalking Horse Agreement**”). Attached hereto and marked as **Exhibit “B”** is a copy of the Initial Order. A description of the approved Sale Process is attached hereto and marked as **Exhibit “C”**.

7. Pursuant to the terms of the Sale Process, bidders were required to submit bids by 5:00 p.m. on November 22, 2021 (the “**Bid Deadline**”). No bids were received other than the bid submitted by the Stalking Horse Bidder (the “**Stalking Horse Bid**”).

8. This affidavit is sworn in support of the Applicant’s motion for an order, *inter alia*,

- a) declaring that a corporation to be incorporated (“**ResidualCo**”):
  - i. is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c C-36 (the “**CCAA**”) applies;
  - ii. is an Applicant in these CCAA proceedings; and
  - iii. is added to the style of cause in these proceedings;
- b) approving a reverse vesting of all of the liabilities of Medifocus to ResidualCo;
- c) approving a corporate reorganization pursuant to which Asset Profits Limited or its permitted assignee (“**PurchaseCo**”) will subscribe for shares in Medifocus and all other shares in the capital of Medifocus will be cancelled with the effect that PurchaseCo will become the sole shareholder of Medifocus (the “**Reorganization and Reverse Vesting Transaction**”);
- d) extending the Stay Period (as defined below) up to and including March 15, 2022;
- e) approving the activities of Monitor as described in the Third Report of the Monitor, to be filed (the “**Third Report**”);
- f) approving the fees and disbursements of the Monitor and its counsel to date, as described in the fee affidavits attached to the Third Report;
- g) discharging Medifocus from these CCAA proceedings upon the filing of a certificate of the Monitor confirming, *inter alia*, the consummation of the Reorganization Transaction (the “**Discharge Certificate**”); and



- h) discharging msi Spergel Inc. in its capacity as Monitor in these CCAA proceedings upon the filing of the Discharge Certificate;

9. The background to this CCAA proceeding can be found in my affidavit sworn October 4, 2021, in support of the Applicant's application for the Initial Order under the CCAA (the "**October Affidavit**"), included in the motion record at Tab 3 without exhibits, and in my affidavit sworn December 30, 2021, included in the motion record at Tab 4 without exhibits.

**A. THE SALE PROCESS**

10. The purpose of the Sale Process was to solicit offers for the purchase of the Applicant's business as a going concern on terms that were superior to those of the Stalking Horse Bidder.

11. On October 5, 2021, in connection with its initial application under the CCAA, the Applicant and the Stalking Horse Bidder executed the Stalking Horse Agreement.

12. In accordance with the Sale Process, within five (5) days following issuance of the Order approving the Sale Process, the Monitor commenced a marketing process in accordance with the terms of the Sale Process.

13. The Monitor prepared and circulated a teaser letter, a copy of which is attached hereto and marked as **Exhibit "D"**. Further, on October 13, 2021, the Monitor caused a notice to be published in the Globe and Mail, Baltimore Sun, and Washington Post newspapers, a copy of which is attached hereto and marked as **Exhibit "E"**. Further, the Monitor posted notices on Insolvency Insider and on the Monitor's website.

14. I am informed by the Monitor that three potential bidders expressed interest in acquiring the Applicant's business. Two of those potential bidders signed non-disclosure agreements and gained access to the confidential virtual data room to perform due diligence.

15. Notwithstanding these expressions of interest, I am informed by the Monitor that no bids, other than the Stalking Horse Bid, were received by the Bid Deadline. Accordingly, in accordance with the Sale Process, the Stalking Horse Bidder was declared the successful bidder.

16. As noted in my October Affidavit, the Stalking Horse Bid contains the following material terms:

- (a) the purchase of substantially all of the assets of Medifocus (the "**Purchased Assets**") and the assumption of the liabilities relating to the Purchased Assets which are due and payable or relate to the period from and after the closing date;
- (b) the purchase price payable by the Purchaser to the Applicant was the aggregate of the following:
  - (i) the assignment and assumption of the amount of the DIP Facility advanced by the Purchaser to Medifocus;
  - (ii) the payment in cash, or the assumption of, any priority payables of Medifocus, which by operation of law, are in priority to the security interest of the Purchaser; and
  - (iii) the amount of \$1,079,818.85 as a credit bid of the secured indebtedness owing by Medifocus to the Purchaser as at the date of filing the NOI.

**B. The Reorganization and Reverse Vesting Transaction**

17. As noted in my affidavit sworn December 30, 2022, the Applicant and the Stalking Horse Bidder structured the Stalking Horse Agreement as an asset purchase for the purposes of facilitating the Sale Process. However, in order to preserve crucial regulatory approvals necessary for the operation of the business, the Applicant and the Stalking Horse Bidder will, subject to this Court's approval, implement the transaction by way of a reverse vesting and share subscription.

18. I am advised by Caitlin Fell, partner at Weisz Fell Kour LLP, insolvency counsel to Medifocus, that a reverse vesting transaction will aid in preserving crucial regulatory approvals necessary for the operation of the business. The Applicant's research and development activities, pre-clinical tests and clinical trials, and ultimately the manufacturing, marketing and labeling of medical device systems are subject to extensive regulation by the United States Food and Drug Administration (the "**FDA**"). Medifocus has received FDA approval for the sale of its principal revenue-generating thermotherapy system, Prolieve, which is used in the treatment of Benign Prostatic Hyperplasia. A second thermotherapy system intended for the treatment of breast cancer, called APA 1000, is currently paused at Phase III of its clinical trial due to a lack of available funding. In addition, Medifocus holds FDA approvals in two additional technologies, not yet commercialized. These regulatory approvals process typically take years to obtain and require the expenditure of substantial resources.

19. Alongside its operations in the United States, Medifocus operates overseas and holds equivalent regulatory approvals in Hong Kong, Thailand, Singapore, South Korea, and Malaysia, among others (the "**Asia Approvals**"). The Asia Approvals were granted on the basis of the FDA

approval of Medifocus' technologies. The Asia Approvals are contingent on Medifocus maintaining its FDA approvals.

20. I verily believe that the FDA Approvals and Asia Approvals would be at risk if the business or any of the Purchased Assets, including the underlying intellectual property, are transferred to an entity by way of the typical approval and vesting order. Any loss of regulatory approval would require the Purchaser to re-enter the approval process at considerable expense and with significant prejudice to the viability of the business, particularly if the Purchaser is unable to benefit from the increase in sales expected after the COVID-19 pandemic. As it is essential to the going-concern value of the Business that the sale transaction be structured in a manner that preserves the FDA approval and the Asia Approvals, the Applicant seeks the granting of a Reverse Vesting Order.

21. To facilitate the reverse vesting, the Applicant seeks an Order of the Court approving certain corporate reorganization steps, including the subscription by PurchaseCo of common shares of Medifocus and a subsequent cancellation of all other shares in the capital of Medifocus held by shareholders other than PurchaseCo, with the result that PurchaseCo shall be the sole shareholder of Medifocus.

22. In order to implement the Reverse Vesting and Corporate Reorganization, I am advised that Medifocus will be required to seek to lift the Cease Trade Order imposed by the Ontario Securities Commission ("OSC") in 2020 in order to facilitate the subscription of PurchaseCo for shares in Medifocus. Following the reorganization, Medifocus will apply to the OSC to cease being a reporting issuer.

23. The specific steps comprising the Reorganization and Reverse Vesting Transaction for which Medifocus seeks this Court's approval is set out below. Following the incorporation of ResidualCo:

- (a) all of the liabilities of Medifocus other than certain assumed liabilities (such as priority payables and the DIP Facility, if any) shall be transferred and vested in ResidualCo;
- (b) Medifocus shall apply to the OSC for a partial lifting of the Cease Trade Order in order to facilitate the subscription by PurchaseCo of shares in Medifocus;
- (c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common Shares that are issued pursuant to paragraph 23(d) herein); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo;
- (d) PurchaseCo shall subscribe for new shares of Medifocus to be paid by way of credit bid of the secured indebtedness owing by Medifocus to PurchaseCo in the amount of \$1,079,818.85 via private placement to be coordinated with the TSX;
- (e) all equity interests, compensation plans and other securities in Medifocus, other than the interest of PurchaseCo, shall be cancelled for no consideration; and
- (f) Medifocus shall apply to the OSC to cease to be a reporting issuer, including full revocation of the Cease Trade Order.

24. Once these transaction steps are completed, MSI will be discharged as Monitor, the CCAA proceedings terminated as against Medifocus and ResidualCo will make an assignment into bankruptcy.

25. In my view, the completion of the Reorganization and Reverse Vesting Transaction represents the best and only means of ensuring recovery for the Applicant's stakeholders and protecting its valuable medical research pipelines.

26. Further, other than the bid submitted by the Stalking Horse Bidder, no bids were received in the Sale Process and, accordingly, the Reorganization and Reverse Vesting Transaction represents the best and only transaction available to the Applicant.

**C. Extension of the Stay of Proceedings**

27. The Applicant also seeks an extension of the stay of proceedings up to and including March 15, 2022. This date will permit the Applicant and PurchaseCo to consummate the Reorganization and Reverse Vesting Transaction including obtaining the necessary approvals from the OSC.

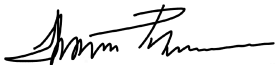
28. The Applicant has at all times continued its operations and research activities, and there is going-concern value to be realized from the sale of the business in accordance with the proposed Sale Transaction.

29. The cash flow projections, reviewed and prepared with the Monitor, and attached as an appendix to the Third Report of the Monitor, to be filed, project that the Applicant will have sufficient funding to continue operating until and including March 15, 2022.

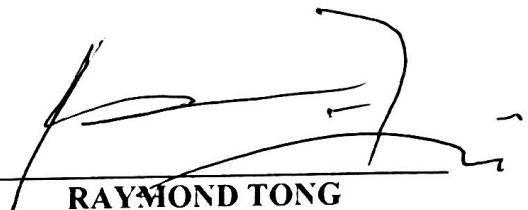
30. The Applicant has acted in good faith and with due diligence to develop a viable going-concern proposal in order to maximize recovery for its creditors and stakeholders.

31. I am not aware of any creditors who will be materially prejudiced by an extension of the stay of proceedings.

**SWORN**, before me, remotely by Raymond Tong stated as being located in the City of Hong Kong, *by continuous video conference* to the City of Toronto, in the Province of Ontario on this 2nd day of February, 2022.



**A Commissioner for Taking Affidavits**

  
**RAYMOND TONG**

THIS IS **EXHIBIT “A”** REFERRED TO IN THE  
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE  
ME, THIS 2ND DAY OF FEBRUARY, 2022



---

A COMMISSIONER FOR TAKING AFFIDAVITS



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

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Date of the Notice of Intention:

September 08, 2021

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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

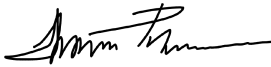
Official Receiver

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

Canada



THIS IS **EXHIBIT “B”** REFERRED TO IN THE  
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE  
ME, THIS 2ND DAY OF FEBRUARY, 2022



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A COMMISSIONER FOR TAKING AFFIDAVITS

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

**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.

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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**

**WEISZ FELL KOUR LLP**

Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

**Caitlin Fell** LSO No. 60091H  
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sparsons@wfklaw.ca  
Tel: 416.613.8284

Fax: 416.613.8290

**Lawyers for Medifocus Inc.**



THIS IS **EXHIBIT “C”** REFERRED TO IN THE  
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE  
ME, THIS 2ND DAY OF FEBRUARY, 2022



---

A COMMISSIONER FOR TAKING AFFIDAVITS

## 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**

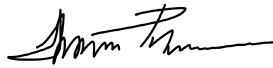
33. The Monitor and the Company shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder or Qualified Bidder, or any creditor or other stakeholder, for any act or omission related to this Sale Process.



## Schedule “A”

### Form of Non-Disclosure Agreement

THIS IS **EXHIBIT “D”** REFERRED TO IN THE  
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE  
ME, THIS 2ND DAY OF FEBRUARY, 2022



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A COMMISSIONER FOR TAKING AFFIDAVITS



## ACQUISITION OPPORTUNITY

### Medifocus Inc.

#### Opportunity

An opportunity exists to potentially acquire any right, title and interest of the business and assets of Medifocus Inc. (the “**Company**”), including certain intellectual property related to the research, development and sale of medical device systems.

By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), made on October 7, 2021, msi Spergel Inc., as Court-appointed Monitor of the Company, was authorized to undertake the marketing and sale of the assets, property and undertakings of the Company (the “**Sale Process**”).

#### Business Overview and Description of Assets

Medifocus is engaged in the research, development and sale of medical systems that deliver focused microwave-generated heat to diseased tissue, thereby destroying or shrinking the targeted tissue. Medifocus has developed two platforms under which heat is delivered to human tissue for therapeutic purposes:

- **Prolieve**: A thermotherapy platform that delivers heat via a catheter that is inserted directly to the diseased tissue. The catheter is attached to a modular, free-standing unit that generates, controls, and monitors heat delivery (“**Prolieve**”). Prolieve is used to treat Benign Prostatic Hyperplasia, also known as an enlarged prostate (“**BPH**”). Prolieve has received approval by the United States Food & Drug Administration (“**FDA**”). Older male patients are the primary users of Prolieve; and
- **APA Platform/APA 1000**: A thermotherapy platform (the “**APA Platform**”) that delivers heat to diseased tissue via microwave beams from outside the body. Under this method of heat delivery, military radar positioning technology is used to insert a fine needle probe into the diseased tissue. This probe acts as a receptor for microwave generated heat which is delivered to the targeted tissue. Medifocus has developed the APA Platform as a system for the treatment of breast cancer (the “**APA 1000**”). APA 1000 is intended to sufficiently shrink a tumour to facilitate a lumpectomy rather than a mastectomy, thereby preserving the healthy breast tissue.

At this time, the APA 1000 has not been approved for use by the FDA to treat locally advanced tumors in breast cancer patients. Phases I and II of the clinical trials for the APA 1000 are completed, and the company received approval from the FDA to conduct Phase III Clinical trials.

Medifocus also holds FDA approvals in two additional technologies that are not yet commercialized.

Medifocus has accumulated an extensive patent portfolio relating to these types of treatments. Medifocus holds equivalent regulatory approvals in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the “**Asia Approvals**”).

Medifocus’ shares were historically traded on the Toronto Stock Exchange under the trading symbol “MFS” and the Ontario Trading Commission under the trading symbol “MDFZF”. The stock has ceased trading due to failure to file periodic disclosures.

## Company Highlights

Incorporated under the *Ontario Business Corporations Act*

- Year Established: 2005
- Head Office Location: 1090 Don Mills Road, Suite 404, Toronto, Ontario, M3C 3R6
- Operating Facility: 10240 Old Columbia Road, Suite G, Columbia, Maryland, 21046
- Two commercial products: Prolieve Thermodilation System and the APA 1000

## Current Context

Due to the COVID-19 pandemic, much of the routine treatment of BPH since March 2020 has been delayed, as BPH generally qualifies as a non-emergent procedure. As a result of the drop in Prolieve sales and the continued limitation on non-essential procedures, Medifocus was unable to continue to fund itself or raise capital to fund the Phase III trials for the APA 1000.

As a corporation engaged in the research and commodification of medical technologies, Medifocus’ going concern value relies on its ability to maintain key regulatory approvals.

On or about October 7, 2021, the Company obtained an initial order (the “**Initial Order**”) granted by the Court under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) that, among other things, (A) appointed MSI Spergel Inc. (in such capacity, the “**Monitor**”) as the monitor of the Company in the CCAA proceedings, and (B) approved the Sale Process.

As part of the Court approved Sale Process, the Company was authorized to enter into a purchase and sale agreement with Assets Profits Limited, as a stalking horse purchaser, pursuant to which Assets Profits Limited has made an offer to purchase substantially all of the assets, undertakings and properties of the Company. The Sales Process is

intended to solicit interest in the Company's business and assets for consideration greater than that offered by the stalking horse purchaser.

### **Bid Process**

Under the Sale Process, all qualified interested parties will be provided with an opportunity to participate. The Sale Process is intended to solicit interest in a restructuring or the sale of the assets and/or business of the Company, which may include a merger, reorganization, recapitalization, primary equity issuance, or other similar transaction.

If you are interested in pursuing this opportunity for the Company's right, title and interest in the business and assets of the Company, please execute the attached confidentiality agreement ("**NDA**") and return it to the Monitor, attention to: Mukul Manchanda (Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)).

The Monitor has prepared an on-line data room to provide additional information on the Company and this opportunity. Access to the on-line data room is available to prospective purchasers that execute and return the attached NDA.

**The deadline for the submission of offers is November 22, 2021  
at 5:00 pm (Toronto time).**

In due course, the on-line data room will include a standard asset purchase agreement ("**Purchase Agreement**"). Bidders are encouraged to submit their offers in the form of the Purchase Agreement or substantially in the form of the Purchase Agreement.

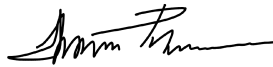
The Monitor reserves the right to amend or terminate this offering at any time. The Monitor nor the Company is under no obligation to accept the highest or any offer.

All communications relating to this opportunity should be directed to:

Douglas Liu  
VP Finance  
Medifocus Inc.  
(410) 290-5734  
[douglasliu@medifocusinc.com](mailto:douglasliu@medifocusinc.com)

Mukul Manchanda  
Managing Partner  
msi Spergel inc.  
(416) 498-4314  
[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

THIS IS **EXHIBIT “E”** REFERRED TO IN THE  
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE  
ME, THIS 2ND DAY OF FEBRUARY, 2022



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A COMMISSIONER FOR TAKING AFFIDAVITS



# SPERGEL

October 8, 2021

To: Creditors of Medifocus Inc. (“**Medifocus**” or the “**Company**”)

**Re: IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF MEDIFOCUS INC.**

On October 7, 2021, the Company sought and obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). msi Spergel inc. was appointed as monitor of the Company (in such capacity, the “**Monitor**”). The Initial Order provides, among other things, a stay of proceedings until January 7, 2022 (the “**Stay Period**”). In accordance with Section 23(1) of the CCAA and paragraph 47 of the Initial Order, a copy of the Initial Order is available on the Monitor’s Case Website at <https://www.spergelcorporate.ca/engagements/medifocus-inc/>.

Pursuant to the Initial Order and during the Stay Period, all Persons having oral or written agreements with the Company 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 Company, are hereby restrained until further Order of the Court from discontinuing, altering, interfering with or terminating the supply of goods or services as may be required by the Company and that the Company shall be entitled to the continued use of their 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 the Initial Order are paid by the Company in accordance with the normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and each of the Company and the Monitor, or as may be ordered by the Court. Please contact the Monitor if you have questions regarding the terms of the Initial Order.

A list of the known creditors of the Company as at the date of the Initial Order, including the outstanding balances, has been prepared and is posted on the Monitor’s website.

**msi Spergel inc.** Licensed Insolvency Trustees 505 Consumers Road, Suite 200, Toronto, ON M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199

• Barrie 705 722 5090 • Hamilton 905 527 2227 • Mississauga 905 602 4143 • Oshawa 905 721 8251 • Toronto-Central 416 778 8813  
• Brampton 905 874 4905 • London 519 902 2772 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Saskatchewan 306 341 1660

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# SPERGEL

During the Stay Period, 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 the Initial Order, nor shall any Person be under any obligation on or after the date of the Initial Order to advance any monies or otherwise extend any credit to the Company. Nothing in the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

To date, no claims procedure has been approved by the Court and creditors therefore are not required to file a proof of claim at this time.

Should you have any questions regarding the foregoing or require further information, please contact the Monitor at 416-498-4314 or via e-mail [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca).

**msi Spergel inc.**

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

Per:

---

Mukul Manchanda, CPA, CIRP, LIT  
Managing Partner

**msi Spergel inc.** Licensed Insolvency Trustees 505 Consumers Road, Suite 200, Toronto, ON M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199

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# Tab 3

Court File No. 31-2764805

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

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

AND 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

**AFFIDAVIT OF RAYMOND TONG**

(Sworn October 4, 2021)

**I, RAYMOND TONG, of the City of Hong Kong, MAKE OATH AND SAY:**

1. I am a director of the Applicant, Medifocus Inc. (the “**Applicant**” or “**Medifocus**”). As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out below, I have relied on information from others, I state the source of such information and verily believe it to be true.
2. I am authorized to make this Affidavit on behalf of the Applicant.
3. All references to currency in this Affidavit are references to Canadian dollars unless otherwise indicated.
4. On September 8, 2021, Medifocus filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “**BIA**”) and msi Spergel Inc. (“**MSI**”) was appointed as proposal trustee (in such capacity, the

-2-

“**Proposal Trustee**”). Attached hereto and marked as **Exhibit “A”** is a copy of the Certificate of Filing of a Notice of Intention to Make a Proposal that was filed commencing the NOI proceedings.

5. The initial time period in which Medifocus is required to file a proposal with the Official Receiver is set to expire on October 8, 2021.

6. This Affidavit is sworn in support of a motion by Medifocus for an order (the “**Initial Order**”) that, among other things: (i) converts and continues the NOI proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”); (ii) appoints MSI as the court-appointed monitor of the Applicant (in such capacity, the “**Proposed Monitor**”); (iii) declaring that the Applicant is a company to which the CCAA applies; (iv) approves the DIP Facility; (v) approves the Sale Process and Stalking Horse Bid; and (vi) approves the Super-Priority Charges (each as defined below).

7. If the relief sought in the Initial Order is ultimately granted, the Applicant intends to use the time afforded by the stay of proceedings provided under the Initial Order, with the assistance of the Proposed Monitor, to implement and carry out the Sale Process for the sale of the business and assets of Medifocus.

8. The continuation of the Applicant’s insolvency proceedings under the CCAA will provide it with the flexibility to effect a sale transaction that will preserve and protect certain of the key approvals and permits attached to certain of the property of the Applicant.

## **I. INTRODUCTION**

9. Medifocus is engaged in the research, development and sale of medical device systems that deliver focused microwave-generated heat to diseased tissue, thereby destroying or shrinking the

targeted tissue. Medifocus developed two platforms under which heat is delivered to human tissue for therapeutic purposes (the “**Business**”). Medifocus is incorporated under the laws of Ontario and primarily operates in the United States, but conducts business and holds patents across several jurisdictions, including countries in Asia.

10. The first thermotherapy platform developed by Medifocus delivers heat via a catheter that is inserted through an incision directly to the diseased tissue. The catheter is attached to a modular, free-standing unit that generates, controls and monitors heat delivery (“**Prolieve**”). Prolieve is used to treat Benign Prostatic Hyperplasia, also known as an enlarged prostate (“**BPH**”). Prolieve has received approval by the United States Food and Drug Administration (the “**FDA**”).

11. Medifocus’ second thermotherapy platform (the “**APA Platform**”) delivers heat to diseased tissue via microwave beams from outside of the body. Under this method of heat delivery, military radio positioning technology is used to insert a fine needle probe into the diseased tissue. This probe acts as a receptor for microwave generated heat which is delivered to the targeted tissue. Medifocus has developed the APA Platform as a system for the treatment of breast cancer (“**APA 1000**”). APA 1000 is intended to sufficiently shrink a tumour to facilitate a lumpectomy rather than a mastectomy, thereby preserving the affected breast tissue.

12. At this time, APA 1000 has not been approved for use by the FDA to treat locally advanced tumors in breast cancer patients. Phases I and II of the clinical trials for APA 1000 are complete, but Medifocus has had to pause the Phase III clinical trial due to insufficient cash flow.

13. Despite the Applicant’s confidence in both the viability and clinical value of Prolieve and APA 1000, patient uptake has been slow. As such, Medifocus has historically funded itself through a combination of debt and equity offerings, rather than supporting operations through revenue



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generated from the sales of Prolieve. To date, revenue alone has been insufficient to fund the Applicant's working capital requirements.

14. Until Prolieve can achieve sufficient market saturation, Medifocus will be reliant on capital infusions, alongside revenue from the sale of Prolieve, however, because of constrained demand and from additional COVID-19 related supply chain disruptions, sales of Prolieve have been halted since May 2021.

15. Older male patients are the primary users of Prolieve. Due to the COVID-19 pandemic, much of the routine treatment of BPH since March 2020 has been delayed, at times for several months, as BPH generally qualifies as a non-emergent procedure. As a result, Medifocus' sales and profits have decreased relative to the comparable period prior to the COVID-19 pandemic.

16. Additional circumstances have also contributed to Medifocus' working capital issues, including hesitancy by third party lenders to advance additional funding while non-essential medical procedures are limited. Medifocus has therefore had difficulty raising the requisite funds to continue operations.

17. The Applicant is insolvent and requires ongoing protection under the CCAA to provide the breathing room necessary to maximize value for all affected stakeholders by carrying out the Sale Process as a means to secure the maximum recovery for creditors.

18. It is the intention of Medifocus that these CCAA proceedings will provide the Applicant with time required to complete the Sale Process in a Court-supervised process that will maximize value for the Applicant and its stakeholders.

## II. OVERVIEW OF THE APPLICANT

### A. Business of Medifocus

19. Medifocus is a public corporation and was incorporated on April 25, 2005, pursuant to the Ontario *Business Corporations Act*, RSO 1990, c B.16. Medifocus maintains its registered head office at 1090 Don Mills Rd, Suite #404, Toronto, Ontario M3C 3R6.

20. The Applicant's corporate objectives and purpose are unrestricted. A corporate profile report is attached hereto and marked as **Exhibit "B"**.

21. 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".

22. On September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Applicant due to the failure to file certain periodic disclosure.

23. As I have described above, Medifocus is primarily a health technology company developing emergent treatments utilizing microwave technology and thermotherapy. Since 2012, Medifocus has spent over USD \$1.5 million on patent fees to maintain its patent portfolio relating to these treatments, including certain patents relating to Prolieve and APA 1000. A chart outlining Medifocus' patent portfolio is attached hereto and marked as **Exhibit "C"**.

24. Since its inception, the Applicant has incurred substantial operating losses while operating in a capital-intensive industry. As a medical technology company focusing on new and emergent treatment options, Medifocus is subject to certain risks and uncertainties including, among others, current and potential competitors with greater financial resources and its dependence on certain significant customers.

25. Accordingly, there is some urgency in stabilizing the business and commencing the Sale Process as soon as possible.

(i). *Acquisition of APA 1000 Rights*

26. Medifocus was founded on the thesis that microwave technology and thermotherapy could be effectively used to treat disease.

27. In the 1990s, the Celsion Corporation began developing technologies for the treatment of BPH and breast cancer using thermotherapy technology, leading to the development and commercialization of Prolieve. In 2005, Celsion Corporation transferred all the interest in its license and other rights in APA 1000 to Celsion (Canada) Limited ("**Celsion**").

28. On June 29, 2006, Medifocus completed an initial public offering on the TSXV and engaged in a share exchange with Celsion in 2008, pursuant to which Celsion became a wholly-owned subsidiary of Medifocus (the "**Share Exchange Transaction**"). Celsion subsequently merged with Medifocus through a reverse merger transaction, thereby becoming a public corporation.

(ii). *Purchase of Prolieve Technology*

29. On July 24, 2012, the Applicant acquired the Prolieve technology and related assets from Boston Scientific Corporation ("**Boston Scientific**") pursuant to an Asset Purchase Agreement dated June 25, 2012 and amended on July 24, 2012 (the "**Asset Purchase Agreement**"). Under the Asset Purchase Agreement, Medifocus was to pay the purchase price in two parts: (i) USD \$2,535,610 in cash on the closing of the transaction; and (ii) a contingent consideration arrangement to pay Boston Scientific up to USD \$2,500,000 in quarterly installments at a rate of



10% of the sales of Prolieve products (the “**Royalties**”). The Royalties currently owing are USD \$2,190,867. The initial cash consideration has been paid, however the Royalties remain past due. The Asset Purchase Agreement is attached hereto and marked as **Exhibit “D”**.

30. In recent years, Medifocus has faced declining gross revenues from the sale of the Prolieve system. This decrease is primarily due to the lack of funding for sales and marketing activities, competition from newer technologies with strong financial backing and a temporary reduction in demand of non-emergent procedures caused by the COVID-19 pandemic.

31. Resulting from this constrained demand and from additional COVID-19 related supply chain disruptions, the sale of Prolieve has been halted since May 2021.

32. Medifocus’ business model has been in transition and, while I expect the revenue from Prolieve technology to increase in the long term once sales resume and Medifocus increases its market presence, short-term losses are likely to occur during this growth period.

(iii). *Development APA 1000 Technology*

33. The rights to key elements of APA 1000 were licensed from the Massachusetts Institute of Technology (“**MIT**”) pursuant to an Exclusive Patent License Agreement dated October 24, 1997 and amended on June 16, 2007 (the “**Exclusive Patent License Agreement**”). A copy of the Exclusive Patent License Agreement is attached hereto and marked as **Exhibit “E”**.

34. Under the Exclusive Patent License Agreement, MIT was granted:

- (a) a 5% royalty on the net sales of any products derived from APA 1000;
- (b) an annual maintenance fee of \$50,000; and



- (c) the entitlement to receive royalties for so long as the patents relating to the APA 1000 technology is valid or until the Exclusive Patent License Agreement is terminated.

35. APA 1000 has been successfully developed but has not been approved by the FDA or the Canadian Medical Devices Bureau for commercial use. The Phase I and Phase II clinical trials were completed by Celsion, establishing the system's safety and efficacy on a limited scale. Medifocus began conducting the Phase III clinical trials, which have been paused. Medifocus intends to complete the Phase III clinical trials as soon as it obtains the funding to do so.

(iv). *FDA and Equivalent Approvals*

36. Medifocus' research and development activities, pre-clinical tests and clinical trials, and ultimately the manufacturing, marketing and labeling of medical device systems, are all subject to extensive regulation by the FDA. The regulatory approval process typically takes years and requires the expenditure of substantial resources.

37. Having now successfully obtained certain FDA approvals, the Applicant is subject to periodic inspection by the FDA of their clinical trials, facilities, procedures and operations and/or the testing of products to determine whether the systems and processes are compliant with FDA regulations.

38. As described above, Medifocus has received FDA approval for the sale of Prolieve. The APA 1000 platform's Phase III clinical trials are currently paused. Medifocus holds FDA approvals in two additional technologies, not yet commercialized, which were acquired during the Celsion merger.

39. Alongside its operations in the United States, Medifocus operates overseas and holds equivalent regulatory approvals in Hong Kong, Thailand, Singapore, South Korea and Malaysia, among others (the “**Asia Approvals**”). The Asia Approvals were granted based on the FDA approval of Medifocus’ technologies. The Asia Approvals are contingent on Medifocus maintaining its FDA approvals.

40. Medifocus waited over a year to receive its suite of FDA approvals. In order to transfer the technologies of Medifocus, the FDA approvals must be processed by the FDA. Should Medifocus lose, transfer or otherwise have a third-party apply to the FDA to receive the approvals, it would need to enter into the regulatory process to receive the Asia Approvals.

41. As a corporation engaged in the research and commodification of medical technologies, Medifocus’ going concern value relies on its ability to maintain key regulatory approvals.

#### **B. Employees & Pension Plans**

42. Medifocus has two full-time employees. Neither of Medifocus’ employees are employed in Canada. Neither employee is a member of a group benefits plan.

43. None of the Applicant’s current employees are members of a labour union and, consequently, there is no relationship between the management of Medifocus and any labour union.

#### **C. Cash Management**

44. Medifocus conducts its banking through the Bank of America and has historically banked through Sandy Spring Bank. Currently, Medifocus maintains an operating account with the Bank of America.

### III. ASSETS AND LIABILITIES

45. In advance of these proceedings, Medifocus has prepared: (i) consolidated audited annual financial statements for the fiscal year ending on March 31, 2019 (the “**2019 Financial Statements**”); and (ii) draft consolidated interim financial statements as at March 31, 2021 (the “**2021 Interim Financial Statements**”). Copies of the 2019 Financial Statements and the 2021 Interim Financial Statements are attached hereto and marked as **Exhibits “F” and “G”**.

46. The 2021 Interim Financial Statements have been prepared on an unaudited basis and were prepared strictly to assist the Court and are not intended to be used or relied upon for any purpose outside of this Application.

47. Medifocus has incurred substantial operating losses, principally from expenses associated with the development of Prolieve and research, development and financing activities. These operating losses are reflected in the aforementioned financial statements prepared by the Applicant. I believe that these expenditures were essential for the commercialization of Medifocus’ technologies.

48. As provided in the 2021 Interim Financial Statements, the Applicant’s net loss in the fiscal year ending on March 31, 2021 was USD \$1,887,706, an increase of USD \$96,344 from the Applicant’s net loss of USD \$1,791,362 in the prior fiscal year ending on March 31, 2020. The increase is primarily the result of additional interest expenses of the debt financing previously entered into by Medifocus to commercialize and develop its operations.



49. The 2021 Interim Financial Statements shows accounts receivable in the aggregate amount of USD \$197,956 as at March 31, 2021, down from USD \$310,384 recorded for the March 31, 2020 year end.

50. Due in part to the reduction in number of patients receiving Prolieve treatments during the COVID-19 pandemic, the Applicant's total sales in the fiscal year ending on March 31, 2021 amounted to USD \$1,100,989, a decrease of USD \$921,739 from the previous fiscal year.

**A. Real Property Leases of the Applicant**

51. Medifocus does not own any real property and its main offices (the "**Offices**") are leased from a third-party landlord in the United States, Oekos Rivers Columbia, LLC (the "**Landlord**").

52. Medifocus leases the Offices pursuant to a lease with the Landlord dated November 14, 2012 (as amended from time to time, the "**Lease**"). The Offices comprise of 6,178 square feet of office and storage space. Medifocus' current annual rent is approximately USD \$86,152 which increases yearly to approximately USD \$93,906 in the final year of the Lease. The Lease expires on February 28, 2023.

53. Medifocus is currently the defendant in litigation brought in the Courts of Maryland by the Landlord for US\$178,748.23 alleged to be owing under the Lease (the "**Lease Litigation**"). The Lease Litigation is currently ongoing and the Applicant has received summons for a hearing scheduled on October 4, 2021.

**B. Secured Obligations of the Applicant**

54. A copy of a certified search of the Personal Property Security Registration System current to September 23, 2021, is attached hereto and marked as **Exhibit "H"**.

55. Medifocus' sole secured creditor is Asset Profits Limited ("**Asset Profits**" or the "**Stalking Horse Bidder**") that extended certain loans to Medifocus pursuant to loan agreements dated May 13, 2016, August 1, 2016 and October 31, 2016 (the "**Promissory Notes**"). As a term of the Promissory Notes, Medifocus agreed to grant security in favour of Asset Profits in Medifocus' intellectual property. On April 21, 2021, Medifocus executed a general and continuing security agreement granting a security interest in all of its property, assets and undertakings in favour of Asset Profits (the "**GSA**"). A copy of the GSA is attached hereto and marked as **Exhibit "I"**. The GSA was registered in the Ontario Personal Property Security Registration System on April 21, 2021.

56. Under the Promissory Notes, Asset Profits advanced a combined USD \$500,000 to Medifocus. In total, the Applicant's current indebtedness under the Promissory Notes, including accrued interest, to Asset Profits is approximately USD \$997,485.

### **C. Unsecured Obligations of the Applicant**

57. During the fiscal year ending March 31, 2014, the Applicant raised gross proceeds of USD \$5.6 million from the sale of convertible redeemable promissory notes and warrants (collectively, the "**Units**"). Each Unit consists of (i) a USD \$10,000 face value convertible redeemable promissory note, bearing 8% annual interest and due in three years (the "**Notes**"), convertible into shares of common stock beginning six months after the closing date of the offering at a conversion price of USD \$0.25 per share, and (ii) three-year warrants to purchase 20,000 shares of common stock at a price of USD \$0.30 per share. The net proceeds from the offering helped fund costs relating to Prolieve, including research and development activities, capital expenditures and repayment of debt.

58. All of the Notes have matured. The Applicant has not repaid the Notes. As of March 31, 2021, the accrued and unpaid interest on the Notes was approximately USD \$2,425,694.

59. Pursuant to the 2021 Interim Financial Statements, the Applicant has the following liabilities owing (in USD):

Accounts payable:	\$322,709
Accrued expenses:	\$1,188,056
Accrued interest payable:	\$5,899,599
Convertible notes payable (net of discount), current portion	\$5,540,000
The Royalties:	\$2,190,867
Promissory notes payable:	\$783,897
<b>Total</b>	<b>\$15,925,128</b>

#### **D. Ordinary Course Obligations**

##### *(i). Vendors and Suppliers*

60. The Applicant proposes in the Initial Order to stay all pre-filing obligations and to require suppliers and vendors to continue supplying the Applicant. With the DIP funding arrangements provided for in the Initial Order, the Applicant will be able to make payments to its suppliers and vendors to continue operations post-filing.



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(ii). *Employee Obligations*

61. Medifocus currently employs two full-time employees based in the United States who are paid biweekly. The Applicant remits the applicable tax withholdings and pays the employees' portion of the United States *Federal Insurance Contributions Act* and Medicare taxes. Medifocus pays an equal amount of *Federal Insurance Contributions Act* and Medicare taxes in addition to the employee deductions.

#### IV. CASH FLOW FORECAST

62. Medifocus, with the assistance of the Proposed Monitor, has prepared a weekly projected cash flow forecast of the Applicant for the initial period of the CCAA filing, through November 26, 2021 (the "**CCAA Cash Flow Forecast**"). A copy of the CCAA Cash Flow Forecast is attached hereto and marked as **Exhibit "J"**.

63. The CCAA Cash Flow Forecast demonstrates that the Applicant will have sufficient liquidity to meet its obligations during the initial period of the CCAA filing if the DIP Facility (as defined herein) is approved.

#### V. OBJECTIVE OF CCAA FILING

64. With assistance from the Proposed Monitor, I have considered the Applicant's financial situation and have concluded that it is insolvent as is not able to meet its liabilities as they generally become due. Additionally, the aggregate of Medifocus' property is not, at a fair valuation, sufficient to enable payment of all of its obligations, due and accruing due.

65. The Applicant seeks to continue the restructuring efforts initiated through these NOI proceedings pursuant to section 11.6 of the CCAA. The continuation of this proceeding under the CCAA will, among other things:

- (a) permit the Applicant to continue operations and to solicit going concern sale offers through a stalking horse sale process;
- (b) preserve costs by avoiding the need to return to Court every 45 days for approval of a stay extension;
- (c) allow the Applicant the benefit of the flexibility of the CCAA, including by implementing a reverse vesting structure in order to preserve the value of the FDA approvals and the Asia Approvals;
- (d) avoid the devastating effects of bankruptcy and liquidation, which would destroy significant value for stakeholders, stall Medifocus' future research and result in a loss of employment for the Applicant's employees; and
- (e) preserve the status quo while attempts are made to maximize value for stakeholders and resolve outstanding disputes.

**A. DIP Facility**

66. In light of Medifocus' liquidity issues, the Applicant requires interim financing to sustain its operations, including the payment of professional fees, during these CCAA proceedings.





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67. Under a DIP term sheet (the “**DIP Term Sheet**”), Asset Profits has agreed to establish an interim financing facility (the “**DIP Facility**”) in the maximum principal amount of \$700,000. A copy of the DIP Term Sheet is attached hereto and marked as **Exhibit “K”**.

68. The DIP Term Sheet provides that the DIP Facility shall bear interest at a rate of 9.0% per annum. As further discussed below, Asset Profits intends to include the amount advanced under the DIP Facility as part of its credit bid contained in the Stalking Horse Bid (as defined below).

69. Other key terms of the DIP Term Sheet are that:

- (a) the term of the DIP Facility shall be for six months, with subject to an extension of the term by three months based on the reasonable consent of Medifocus and Asset Profits; and
- (b) the DIP Term Sheet is conditional on: (i) court approval of the DIP Facility and a court order satisfactory Asset Profits which establishes a DIP Charge as a charge against all the property, assets and undertaking of the Applicant, subject to the priorities provided herein; and (ii) representations and warranties made by the Applicant in the DIP Term Sheet being true and correct as of the date given.

## **B. Stalking Horse Sale Process**

70. The Applicant’s immediate objective in this CCAA proceeding will be to formally canvass the market for purchasers of the Business as a going-concern through a court-supervised stalking horse sale process (the “**Sale Process**”). A Reverse Vesting Order may be necessary to retain the existing FDA approvals – a key component of value for the Business. A copy of the proposed Sale

Process, which was developed with the assistance of the Proposed Monitor, is attached hereto as **Exhibit "L"**.

71. The Applicant seeks Court approval of the Sale Process to solicit offers for the assets and/or Business of Medifocus for an amount and on terms which are superior to the transaction contemplated by the stalking horse asset purchase agreement (the **"Stalking Horse Bid"**) submitted by Asset Profits. A copy of the Stalking Horse Bid is attached hereto as **Exhibit "M"**. The Stalking Horse Bid will constitute the 'floor price' for the sale of the Business.

72. Key terms of the Stalking Horse Bid include:

- (a) 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 period from and after the closing date;
- (b) the purchase price payable by the Stalking Horse Bidder to the Applicant is the aggregate of the following:
  - (i) the assignment and assumption of the amount of the DIP Facility advanced by the Purchaser to Medifocus pursuant to the DIP Term Sheet (as defined below);
  - (ii) the payment in cash, or the assumption of, any priority payables of Medifocus, which by operation of law, are in priority to the security interest of the Stalking Horse Bidder in respect to the Stalking Horse Bid; and
  - (iii) the amount of \$1,079,818.85 as a credit bid of the secured indebtedness owing by Medifocus to Asset Profits of the secured indebtedness owing by Medifocus to Asset Profits.(the **"Purchase Price"**)



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(c) the Sale Process provides an expense reimbursement of a maximum of \$25,000 payable to the Stalking Horse Bidder for its expenses reasonably incurred in connection with the Stalking Horse Agreement, which is payable upon termination of the Stalking Horse Agreement.

73. The Sale Process requires that any bid exceed the Purchase Price by at least \$10,000.

### C. The Sale Process

74. The Applicant is seeking approval of the Sale Process to permit other potential purchasers to submit offers superior to the Stalking Horse Bid. The key milestones and deadlines provided within the Sale Process are summarized below:

Milestones	Deadline
Sale Process Commencement	Within five (5) calendar days after the Sale Process is approved by the Court
Bid Deadline and submission of a Binding Asset Purchase/Investment Agreement (" <b>Binding Bid</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

75. The Applicant and the Proposed Monitor will review and evaluate each Binding Bid and:

(i) the Applicant, with the consent of the Proposed Monitor, may identify the highest or otherwise best offer for the assets/Business of Medifocus (the "**Successful Bid**"), or (ii) if no Binding Bids, other than the Stalking Horse Bid, have been received by the bid deadline on November 22, 2021, then Medifocus shall declare the Stalking Horse Bid as the Successful Bid.

76. The Sales Process provides that the selection and consummation of any Successful Bid is subject to Court approval.

## **VI. OTHER RELIEF SOUGHT**

### **A. The Monitor**

77. MSI has consented to act as Monitor of the Applicant, subject to Court approval under the requirements of the CCAA, subject to the court's approval. A copy of MSI's consent is attached hereto and marked as **Exhibit "N"**.

78. At no time in the past two years has MSI or any of its partners or managers been the Applicant's auditor, accountant or employee.

79. I am advised by the Applicant's counsel, Caitlin Fell of Weisz Fell Kour LLP ("**WFK**"), that MSI is a trustee within the meaning of section 2 of the BIA and 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.

### **B. Stay of Pre-Filing Obligations and Transfer to CCAA**

80. In order to permit the Applicant to continue operating as a going-concern while pursuing a restructuring, Medifocus is seeking a continuation of the NOI stay of proceedings under s. 11.6 of the CCAA up to and including January 7, 2022.

81. The NOI proceedings have not concluded, and the original stay of proceedings is set to expire on October 8, 2021. Medifocus has not filed a proposal under the BIA.



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82. The requested extension to the stay of proceedings will provide the Applicant with the breathing room necessary to implement and conclude the Sale Process without having to return to the Court to seek a further extension of the stay during the pendency of the Sale Process.

**C. Administration Charge**

83. The Applicant seeks a super-priority charge (the “**Administration Charge**”) on the Property (as defined in the proposed form of the Initial Order) in the maximum amount of \$200,000 to secure the fees and disbursements incurred in connection with services rendered to Medifocus both before and after the commencement of the CCAA proceedings by counsel to Medifocus, the Proposed Monitor, and counsel to the Proposed Monitor.

84. It is contemplated that each of the aforementioned parties: (i) will have extensive involvement during the CCAA proceedings; (ii) have contributed and will continue to contribute to the restructuring of the Applicant; and (iii) will ensure there is no unnecessary duplication of roles among the parties.

85. I am advised by the Applicant’s counsel, Caitlin Fell of WFK, that the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable and appropriate in light of the Applicant’s CCAA proceedings, the services provided, and the services to be provided by the beneficiaries of the Administration Charge.

**D. DIP Lender’s Charge**

86. As mentioned above, the Applicant requires interim financing to sustain its operations through its restructuring.

87. Medifocus' access to advances under the DIP Term Sheet is conditional upon Court approval of a priority charge against all of the Applicant's assets (the **"DIP Lenders' Charge"**) in the maximum amount of \$700,000.

88. I verily believe that the amount of the proposed DIP Facility and the DIP Lenders' Charge are reasonable and necessary for the stay period and is supported by the CCAA Cash Flow Forecast prepared with the assistance of the Proposed Monitor.

**E. Approval of the Sale Process and Stalking Horse Bid**

89. The proposed Sale Process is a key component of the Applicant's restructuring strategy.

90. The Sale Process, with the Stalking Horse Bid, is designed to maximize realization to the benefit the Applicant's stakeholders and creditors as a whole. To the broader market, the Stalking Horse Bid signals value in the assets and Business and encourages further and higher bids that would enhance recovery for the benefit of the stakeholders and creditors of the Applicant.

91. I believe that the Stalking Horse Bid, in its current form, provides a going-concern solution for the Applicant's creditors and provides value over and above that which the creditors and stakeholders would receive in a liquidation.

**F. Proposed Ranking of Court-Ordered Charges**

92. To summarize, the proposed ranking of the requested charges (collectively, the **"Super-Priority Charges"**) are as follows:

- (a) First, the Administration Charge in the maximum amount of \$200,000; and
- (b) Second, the DIP Lender's Charge in the maximum amount of \$700,000.



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93. Notice of these proceedings have been given to all secured creditors.

## VII. CONCLUSION


94. Medifocus is not able to meet its liabilities as they generally become due. Additionally, the aggregate of Medifocus' property is not, at a fair valuation, sufficient to enable payment of all of its obligations, due and accruing due.

95. Allowing Medifocus to convert the NOI proceedings to a CCAA proceeding will give the Applicant additional time necessary and flexibility to conduct the Sale Process and thereby maximize value for its stakeholders and creditors.

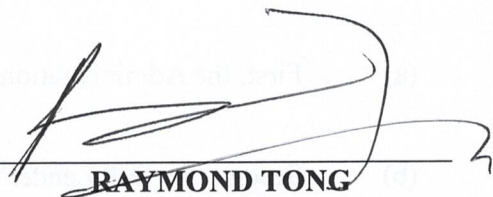
96. The relief requested in the proposed Initial Order is limited to relief that is reasonably necessary for the continued operations of Medifocus in the ordinary course of business during the stay period.

97. I make this Affidavit in support of the Applicant's motion for the relief set out in the Initial Order and no other or improper purpose.

**SWORN** before me by *video conference* from the City of Toronto, in the Province of Ontario to the City of Hong Kong on this 4th day of October, 2021:



A Commissioner for Taking Affidavits

  
RAYMOND TONG

**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**

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**AFFIDAVIT OF RAYMOND TONG**

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**Lawyers for Medifocus Inc.**



# Tab 4

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

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

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

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

**AFFIDAVIT OF RAYMOND TONG**

(Sworn December 30, 2021)

**I, RAYMOND TONG**, of the City of Hong Kong, **MAKE OATH AND SAY:**

1. I am a director of the Applicant, Medifocus Inc. (the "**Applicant**" or "**Medifocus**"). Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and believe it to be true.
2. Medifocus is engaged in the research, development and sale of medical devices that deliver focused microwave-generated heat to diseased tissue.
3. On September 8, 2021, Medifocus filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**"), and msi Spergel Inc. ("**MSI**") was appointed as the proposal trustee (in such capacity, the "**Proposal Trustee**" and, following continuation under the CCAA, the "**Monitor**"). Attached hereto and marked as **Exhibit "A"** is a copy of the Certificate of Filing of a Notice of Intention to Make a Proposal that was filed commencing the NOI proceedings.

4. On October 7, 2021, Medifocus obtained an Initial Order to continue its NOI proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”). Among other things, the Initial Order:

- (a) appointed MSI as Monitor of the Applicant;
- (b) granted a stay of all proceedings in favour of Medifocus up to and including January 7, 2022 (the “**Stay Period**”);
- (c) approved interim financing secured by a priority charge up to a maximum of \$700,000 (the “**DIP Facility**”) in favour of Asset Profits Limited (the “**DIP Lender**” or the **Stalking Horse Bidder**” or the “**Purchaser**” as the case may be); and
- (d) approved a stalking horse sale process led by the Monitor (the “**Sale Process**”) whereby interested parties were required to submit bids by 5:00 p.m. on November 22, 2021 (the “**Bid Deadline**”).

Attached hereto and marked as **Exhibit “B”** is the Initial Order, with a blackline against the Commercial List Model Initial Order. A description of the approved Sale Process is attached and marked as **Exhibit “C”**.

5. Pursuant to the terms of the Sale Process, if no binding offers, other than that of the Stalking Horse Bidder, were received by the Bid Deadline, then the Applicant would declare the Stalking Horse Bidder as the successful bidder. Accordingly, the Applicant is pursuing a transaction (the “**Sale Transaction**”) with the Stalking Horse Bidder. In order to close the Sale Transaction, the parties require an additional period of time under creditor protection.

6. This affidavit is sworn in support of the Applicant's motion to extend the Stay Period up to and including February 8, 2022, in order to give the Applicant and the Stalking Horse Bidder additional breathing room to close the Sale Transaction.

7. The background to this CCAA proceeding can be found in my affidavit sworn October 4, 2021, in support of the Applicant's application for the Initial Order the CCAA (the "**October Affidavit**"), included in the motion record at Tab 3 without exhibits.

## **I. ACTIVITIES OF THE APPLICANTS SINCE THE INITIAL ORDER**

### **A. The Sale Process**

8. Since the issuance of the Initial Order and approval of the Sale Process on October 7, 2021, the Applicant and Monitor have taken timely steps to achieve a going-concern sale of the business.

9. The purpose of the Sale Process was to solicit offers for the purchase of the Applicant's business as a going concern on terms that were superior to those of the Stalking Horse Bidder.

10. On October 5, 2021, in connection with its initial application under the CCAA, the Applicant and the Stalking Horse Bidder executed a binding asset purchase agreement (the "**Stalking Horse Bid**").

11. Shortly after the issuance of the Initial Order on October 7, 2021, the Monitor commenced a marketing process in accordance with the terms of the Sale Process. I was involved in the marketing process on behalf of the Applicant and provided information to the Monitor as requested.

12. The Monitor prepared and circulated a teaser letter, a copy of which is attached hereto and marked as **Exhibit “D”**. Further, on October 13, 2021, the Monitor caused a notice to be published in the Globe and Mail newspaper, a copy of which is attached hereto and marked as **Exhibit “E”**.

13. I am informed by the Monitor that three potential bidders expressed interest in acquiring the Applicant’s business. Two of those potential bidders signed non-disclosure agreements and gained access to the confidential virtual data room to perform due diligence.

14. Notwithstanding these expressions of interest, I am informed by the Monitor that no other bids were received from any other party by the Bid Deadline. Accordingly, in consultation with the Monitor, it was determined that the Stalking Horse Bidder be declared the successful bidder and that the Applicant would pursue a transaction with the Stalking Horse Bidder for the sale of the business as a going concern.

15. As noted in the October Affidavit, the Stalking Horse Bid contains the following key features:

- (a) 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 period from and after the closing date;
- (b) the purchase price payable by the Purchaser to the Applicant (the “**Purchase Price**”) is the aggregate of the following:
  - (i) the assignment and assumption of the amount of the \$700,000 DIP Facility advanced by the Purchaser to Medifocus;

- (ii) the payment in cash, or the assumption of, any priority payables of Medifocus, which by operation of law, are in priority to the security interest of the Purchaser; and
- (iii) the amount of \$1,079,818.85 as a credit bid of the secured indebtedness owing by Medifocus to the Purchaser.

**B. The Sale Transaction**

16. The Applicant and the Stalking Horse Bidder are now focused on closing the Sale Transaction.

17. The Applicant and the Stalking Horse Bidder had initially structured the Stalking Horse Bid as an asset purchase agreement. However, as noted in the October Affidavit, the Applicant, and the Stalking Horse Bidder are pursuing a reverse vesting transaction instead of the asset purchase initially envisaged.

18. I am advised that a reverse vesting transaction will aid in preserving crucial regulatory approvals necessary for the operation of the business.

19. The Applicant's research and development activities, pre-clinical tests and clinical trials, and ultimately the manufacturing, marketing and labeling of medical device systems, are all subject to extensive regulation by the United States Food and Drug Administration (the "**FDA**"). The regulatory approval process typically takes years and requires the expenditure of substantial resources.

20. Medifocus has received FDA approval for the sale of its principal revenue-generating thermotherapy system, Prolieve, which is used in the treatment of Benign Prostatic Hyperplasia. A second thermotherapy system intended for the treatment of breast cancer, called APA 1000, is

currently paused at Phase III of its clinical trial due to a lack of available funding. In addition, Medifocus holds FDA approvals in two additional technologies, not yet commercialized.

21. Alongside its operations in the United States, Medifocus operates overseas and holds equivalent regulatory approvals in Hong Kong, Thailand, Singapore, South Korea, and Malaysia, among others (the “**Asia Approvals**”). The Asia Approvals were granted on the basis of the FDA approval of Medifocus’ technologies. The Asia Approvals are contingent on Medifocus maintaining its FDA approvals.

22. These approvals may be compromised if the business or any of the Purchased Assets, including underlying intellectual property, are transferred to a third party such as the Stalking Horse Bidder.

23. It is essential to the going-concern value of the Business that the Sale Transaction be structured in a manner that preserves the FDA approval and the Asia Approvals.

24. Any loss of regulatory approval would require the Purchaser to re-enter the approval process at considerable expense and with significant prejudice to the viability of the business, particularly if the Purchaser is unable to benefit from the increase in sales expected after the COVID-19 pandemic.

25. To that end, the Applicant requires additional time beyond the timelines provided for in the Sale Process to assess and structure the Sale Transaction, and specifically in order to:

- (a) resolve the proposed transaction structure and make any corporate filings necessary to effect the Sale Transaction;

- (b) assess the applicable regulatory requirements and take the necessary steps to ensure that crucial regulatory approvals, such as the FDA approval and related Asia Approvals survive the Sale Transaction; and
- (c) obtain and implement tax guidance on the final form of transaction.

26. Once the Applicant and the Stalking Horse Bidder have finalized the form of transaction, the Monitor will require a further period of time to prepare and file a motion to approve the form of sale. Pursuant to the approved Sale Process, the Applicant and Stalking Horse Bidder must then close the Sale Transaction within 10 days of approval.

## **II. RELIEF REQUESTED**

27. The Applicant and the Stalking Horse Bidder are not in a position to close the Sale Transaction before the expiry of the Stay Period on January 7, 2022.

28. The Applicant seeks an extension of the Stay Period up to and including February 8, 2022. The outside date of February 8, 2022, will permit the Applicant to obtain the corporate, regulatory, and tax guidance required to consummate the Sale Transaction in the manner that best preserves value for the Applicant's stakeholders.

29. In my view, the completion of the Sale Process and the consummation of the Sale Transaction represent the best and only means of ensuring recovery for the Applicant's stakeholders and protecting its valuable medical research pipelines.

30. The Applicant has at all times continued its operations and research activities, and there is going-concern value to be realized from the sale of the business in accordance with the approved Sale Process.



-8-

31. The cash flow projections, reviewed and prepared with the Monitor, and attached as an appendix to the Second Report to be filed by the Monitor, project that the Applicant will have sufficient funding to continue operating to and including February 8, 2021.

32. The Applicant has acted in good faith and with due diligence to develop a viable going-concern proposal in order to maximize recovery for its creditors and stakeholders.

33. I am not aware of any creditors who will be materially prejudiced by an extension of the Stay Period.

34. I make this Affidavit in support of the Applicant's motion for an extension of the Stay Period and for no other purpose.

**SWORN**, before me, remotely by Raymond Tong stated as being located in the City of Hong Kong, *by continuous video conference* to the City of Toronto, in the Province of Ontario on this 30th day of December, 2021.



**A Commissioner for Taking Affidavits**



**RAYMOND TONG**

# Tab 5

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

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

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

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

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

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

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

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

Report of msi Spergel Inc. (“**MSI**”) in its capacity as monitor of the Applicant (the “**Monitor**”), to be filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and all persons present as stated on the counsel slip, no one appearing for any other person although properly served as appears from the affidavit of Shaun Parsons sworn February ●, 2022:

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

#### **CCAA APPLICANT**

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

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

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

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

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

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

#### **REORGANIZATION TRANSACTION**

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



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

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

## **REVERSE VESTING ORDER**

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

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

## **IMPLEMENTATION OF TRANSACTION**

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

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

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

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

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

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

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

### **EXTENSION OF THE STAY PERIOD**

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

### **DISCHARGE OF MONITOR AND TERMINATION OF CCAA**

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

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

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

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

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

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

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

#### **BANKRUPTCY OF RESIDUALCO**

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

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



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

## **RELEASES**

20. **THIS COURT ORDERS** that, upon the filing of the Monitor’s Certificate, the Monitor, the Monitor’s legal counsel, legal counsel for the Applicant, and each of their respective affiliates, subsidiaries, partners, and successors (the “**Releasees**”) are hereby released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions and other recoveries on account of any liability, obligations, demand or cause of action of whatever nature, which any Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the date of the granting of this Order and all such claims shall be forever waived and released, except that nothing in this Order shall release any Releasee, from liability for gross negligence or willful misconduct.

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

## **APPROVAL OF THE MONITOR’S ACTIVITIES AND FEES**

22. **THIS COURT ORDERS** that the First Report of the Monitor dated October 5, 2021, the Second Report of the Monitor dated January 4, 2022, and the Third Report of the Monitor (the “**Third Report**”), and the activities of the Monitor referred to therein are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, will be entitled to rely upon or utilize in any way such approval.

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

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

#### **GENERAL**

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

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

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

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## Schedule "A"

## Assumed Liabilities-

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

Schedule “B”- Form of Certificate of the Monitor

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

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

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

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

Applicants

**CERTIFICATE OF THE MONITOR**

**RECITALS**

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

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

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

**THE MONITOR CERTIFIES** the following:

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

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

Per: \_\_\_\_\_

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

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

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**TRANSACTION APPROVAL AND REVERSE  
VESTING ORDER**

**WEISZ FELL KOUR LLP**

Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2305, P.O. Box 120  
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**Lawyers for Medifocus Inc.**



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

Applicant

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

Proceedings commenced at Toronto

**MOTION RECORD**

**WEISZ FELL KOUR LLP**

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200 Bay Street, Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

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**Lawyers for Medifocus Inc.**