

**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: Stay Extension)**

December 31, 2021

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Lawyers for Medifocus Inc.

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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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: Stay Extension)**

MEDIFOCUS INC. ("**Medifocus**" or the "**Applicant**") will make a motion to a Judge presiding over the Commercial List on January 7, 2021 at 10:30 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.

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://zoom.us/j/94428741366>

Meeting ID: 944 2874 1366

One tap mobile

+12042727920,,94428741366# Canada

+14388097799,,94428741366# Canada

Dial by your location

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

Meeting ID: 944 2874 1366

Find your local number: <https://zoom.us/u/azAqL47Qo>

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 4 of the motion record, among other things:
 - a) abridging the time for service of this Motion, validating the manner of service, and declaring that this Motion is properly returnable on this day;
 - b) extending the Stay Period (as defined below) up to and including February 8, 2022.
2. Such further and other relief as may be requested and this Honorable Court may deem just;

THE GROUNDS FOR THIS MOTION ARE:

3. 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 (the “**Proposal Trustee**” and, following continuation under the *Companies’ Creditors Arrangement* (Canada)(the “**CCAA**”), the “**Monitor**”);
4. On October 7, 2021, Medifocus obtained an Initial Order to continue its NOI proceedings under the CCAA. msi Spergel Inc. was appointed as the Monitor;
5. The Initial Order provided for, among other things, a stay of all proceedings against the Applicant until and including January 7, 2022 (the “**Stay Period**”) and approved the Applicant’s proposed stalking horse sale process led by the Monitor (the “**Sale Process**”);
6. The approved Sale Process contemplated, in relevant part, the following steps:

- a) the Applicant would enter into a conditional purchase and sale agreement (the “**Stalking Horse Bid**”) with its sole secured creditor, Assets Profits Limited (the “**Stalking Horse Bidder**” or the “**Purchaser**”);
- b) as soon as reasonably practicable after approval of the Sale Process, the Monitor would prepare an initial offering summary (the “**Teaser Letter**”) inviting prospective purchasers to express their interest in respect of the Applicant’s assets;
- c) any person determined by the Applicant and the Monitor to have *bona fide* interest in pursuing a transaction would be given the opportunity to sign a non-disclosure agreement (“**NDA**”) and access confidential due diligence materials in an electronic data room;
- d) bids would be collected in the form of executed asset purchase agreements, with a blackline against the Stalking Horse Agreement, by 5:00 p.m. EST on November 22, 2021;
- e) if no bid other than the Stalking Horse Agreement was received by November 22, then the Applicant would declare the Stalking Horse Bidder to be the successful bidder and pursue a sale (the “**Sale Transaction**”) to the Stalking Horse Bidder; and
- f) following the selection of the successful bid, the Monitor would bring a motion to approve the sale, and the Sale Transaction would close within ten (10) business days of such approval;

The Sale Process

7. On October 5, 2021, the Applicant and the Stalking Horse Bidder duly executed the Stalking Horse Bid as contemplated in the Sale Process;
8. Following the issuance of the Initial Order, the Monitor commenced a marketing process and established November 22, 2021 at 5:00 p.m. EST as the deadline for the submission of bids. Three potential bidders expressed interest in purchasing the Applicant's assets. Two of the potential bidders signed NDAs and received access to the data room;
9. No other bids were received by the expiry of the November 22 deadline. The Applicant and the Monitor determined the Stalking Horse Bidder to be the successful bidder;

The Requested Extension of the Stay Period

10. While the Applicant and Stalking Horse Purchaser have taken timely steps to advance the Sale Transaction, the transaction will not close before the expiry of the Stay Period on January 7, 2022;
11. The Applicant requires an extension of the Stay Period to February 8, 2022, to conclude the Sale Process with the Purchaser, and specifically to permit the Applicant to:
 - a) consider the implementation of a reverse vesting transaction in order to give effect to the sale, including making the necessary corporate filings;
 - b) take the necessary steps to preserve crucial regulatory approvals, including approvals from the U.S. Food and Drug Administration, as well as equivalent approvals in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the “**Asia Approvals**”); and

- c) obtain additional tax guidance in connection with the form of proposed sale transaction and in light of the Applicant's overseas operations;
- 12. The successful completion of the Sale Process represents the best and only means of preserving value for the Applicant's stakeholders and protecting its medical research pipelines;
- 13. It is just, convenient, and in the best interest of the Applicant and its stakeholders that the Stay Period be extended;
- 14. The Monitor supports the extension of the Stay Period and, accordingly, the circumstances exist that make the relief appropriate;
- 15. The cash flow projections, reviewed with the Monitor and attached to the Second Report of the Monitor, to be filed in support of this motion, project that the Applicant will have sufficient funding to continue operating during the extension of the Stay Period;

Good Faith

- 16. 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;

Further Grounds

- 17. Section 11.6 of the CCAA, the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- 18. Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194;

19. 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:

20. The Affidavit of Raymond Tong, sworn December 30, 2021, and the exhibits appended thereto;
21. The Second Report of the Proposed Monitor, to be filed; and
22. Such further and other evidence as counsel may advise and this Honourable Court may permit.

December 31, 2021

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Lawyers for Medifocus Inc.

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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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Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for Medifocus Inc.

TAB 2

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

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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.

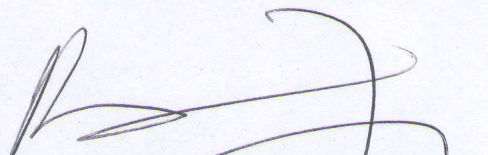
33. I am not aware of any creditors who will be materially prejudiced by an extension of the Stay Period.

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

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 30th DAY OF DECEMBER, 2021



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

Date of the Notice of Intention:

September 08, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL

Subsection 50.4 (1)

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

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

Date: September 08, 2021, 13:17

E-File/Dépôt Electronique

Official Receiver

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

Canada 

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 30th DAY OF DECEMBER, 2021



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 TH
)	
JUSTICE CAVANAGH)	DAY OF OCTOBER, 2021

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

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

INITIAL ORDER

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

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

SERVICE

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

CONTINUANCE UNDER THE CCAA

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

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

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES

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

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

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

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

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

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

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

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

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

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

SALE PROCESS

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

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

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

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

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

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

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

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

INITIAL ORDER

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Revised: January 21, 2014

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR) ~~WEEKDAY~~ THURSDAY, THE # 7TH
 JUSTICE CAVANAGH)
) DAY OF ~~MONTH~~ OCTOBER, ~~20YR~~ 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 ~~[APPLICANT'S NAME]~~ 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 ~~at 330~~
~~University Avenue, Toronto, Ontario~~ by video conference due to the COVID-19 crisis.

ON READING the affidavit of ~~[NAME]~~ Raymond Tong, sworn ~~[DATE]~~ 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 ~~[NAMES], no one appearing for [NAME]~~¹ although duly served as appears from the affidavit of service of ~~[NAME]~~ sworn ~~[DATE]~~ the Applicant and the Proposal Trustee, as well as any person listed on the counsel slip and on reading the consent of ~~[MONITOR'S NAME]~~ 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 validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

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

¹ ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

² ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

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. ~~3.~~ **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. ~~4.~~ **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. ~~5.~~ **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Tong Affidavit ~~of~~ ~~[NAME]~~ ~~sworn~~ ~~[DATE]~~ 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 ~~hereinafter~~ 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. ~~6.~~ **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.

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

9. ~~7.~~ **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. ~~8.~~ **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. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for resiliated~~⁴ 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. ~~10.~~ **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

⁴ ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

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. ~~11.~~ **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA ~~and such covenants as may be contained in the Definitive Documents (as hereinafter defined)~~, 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 aggregate⁵;
- (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. ~~12.~~ **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

⁵ ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

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~~for resiliates~~ 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 ~~for resiliation~~ of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

15. ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer~~for resiliation~~, 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~~for resiliation~~, 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. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30-DAYS]~~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. ~~15.~~ **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. ~~16.~~ **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. ~~17.~~ **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. ~~18.~~ **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.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. ~~19.~~ **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.

~~DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE~~

~~20. — THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~21. — THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided~~

⁶ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

~~in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.~~

~~22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.~~

APPOINTMENT OF MONITOR

22. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~Spirgel 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. ~~24.~~ **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, ~~the Business~~, 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) ~~(e)~~ assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a ~~[TIME INTERVAL]~~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 ~~with~~by the Applicant and the DIP Lender;

(e) ~~(d)~~ 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, ~~but not less than [TIME INTERVAL], or as~~to the extent otherwise agreed to by the Applicant and the DIP Lender;

(f) ~~(e)~~ advise the Applicant in its development of the Plan and any amendments to the Plan;

(g) ~~(f)~~ 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) ~~(g)~~ 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's¹ 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) ~~(h)~~ 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) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

24. ~~25.~~ **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. ~~26.~~ **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. ~~27.~~ **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. ~~28.~~ **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. ~~29.~~ **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 ~~[TIME INTERVAL]~~weekly basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

29. ~~30.~~ **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. ~~31.~~ **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 ~~38~~37 and ~~40~~39 hereof.

DIP FINANCING

31. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a ~~credit facility~~loan from ~~[DIP LENDER'S NAME]~~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. ~~33.~~ **THIS COURT ORDERS THAT** such ~~credit facility~~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 ~~[DATE]~~September 27, 2021 (the "~~Commitment Letter~~"), filed.

33. ~~34.~~ **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. ~~35.~~ **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 ~~38~~37 and ~~40~~39 hereof.

35. ~~36.~~ **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~~ 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. ~~37.~~ **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, ~~or any proposal filed by the Applicant under the Bankruptcy and Insolvency Act of Canada (the "BIA")~~; with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES ~~CREATED BY THIS ORDER~~

37. ~~38.~~ **THIS COURT ORDERS** that the priorities of ~~the Directors' Charge~~, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

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

Second – DIP Lender's ~~Charge; and~~

~~Third – Directors' Charge~~ (to the maximum amount of \$~~●~~700,000).

38. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, 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. ~~40.~~ **THIS COURT ORDERS** that each of ~~the Directors' Charge~~, 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,

⁹ ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

40. ~~41.~~ **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, ~~any of the Directors' Charge, the Administration Charge or~~ 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 Directors' Charge and the Administration Charge, or further Order of this Court.~~

41. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~ Charges shall not be rendered invalid or unenforceable and the rights and remedies of the ~~chargees entitled to the benefit~~ beneficiaries of the applicable Charges (~~collectively, the "Chargees"~~) ~~and/or the DIP Lender thereunder~~ 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 ~~Charges~~ 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 ~~the Charges~~ 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. ~~43.~~ **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. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ 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. ~~45.~~ **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. ~~46.~~ **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. ~~47.~~ **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. ~~48.~~ **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. ~~49.~~ **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. ~~50.~~ **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. ~~51.~~ **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. ~~52.~~ **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.

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

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Lawyers for Medifocus Inc.

THIS IS **EXHIBIT “C”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 30th DAY OF DECEMBER, 2021



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:

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

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

Publication Notice

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

Solicitation of Interest

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

Free of Any and all Claims and Interests

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

“As Is, Where Is”

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

Participation Requirements

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

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

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

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

Due Diligence

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

Bid Deadline

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

Binding APA

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

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

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

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

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

Evaluation of Binding APA

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

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

Selection of Successful APA

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

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

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

Sale Approval Motion Hearing

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

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

Reservation of Rights

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

Miscellaneous

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

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

Limitation of Liability

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

Schedule “A”

Form of Non-Disclosure Agreement

THIS IS **EXHIBIT “D”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 30th DAY OF DECEMBER, 2021



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).

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

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

THIS IS **EXHIBIT “E”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 30th DAY OF DECEMBER, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS



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

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

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

Notice to the Creditors of Medifocus Inc.

NOTICE OF INITIAL ORDER AND SALE PROCESS

PLEASE TAKE NOTICE that on October 7, 2021, Medifocus Inc. (the "**Company**") sought and obtained an initial order (the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Pursuant to the Initial Order, msi Spergel inc. was appointed as monitor of the Company (in such capacity, the "**Monitor**"). 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/>

PLEASE TAKE FURTHER NOTICE that pursuant to the Initial Order, all proceedings against the Company are stayed and may not be commenced or continued without leave of the Court.

PLEASE TAKE FURTHER NOTICE that the Company, with the assistance of the Monitor, will be conducting a sale and investment solicitation process (the "**Sale Process**"), as approved pursuant to the Initial Order, and all qualified interested parties will be provided an opportunity to participate in the Sale Process.

PLEASE TAKE FURTHER NOTICE that additional information regarding this proceeding and the Sale Process can be found on the Monitor's Case Website or by contacting the Monitor at the following coordinates:

msi Spergel inc.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8
Attention: Mukul Manchanda
Telephone: 416-498-4314
E-mail: mmanchanda@spergel.ca

DATED at Toronto, Ontario, this 8th day of October, 2021

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

**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.**

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

AFFIDAVIT OF RAYMOND TONG

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Email: aangle@wfklaw.ca

Tel: 416.613.8288

Fax: 416.613.8290

Lawyers for Medifocus Inc.

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"**.

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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
Total	\$15,925,128

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 (" Binding Bid ") 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

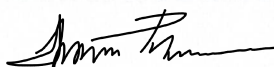
94. Medifocus is not able to meet its liabilities as they generally become due. Additionally, the aggregate of Medifocus' property is not, at a fair valuation, sufficient to enable payment of all of its obligations, due and accruing due.

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.

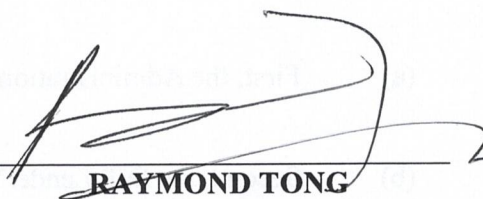
96. The relief requested in the proposed Initial Order is limited to relief that is reasonably necessary for the continued operations of Medifocus in the ordinary course of business during the stay period.

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)**

THE HONOURABLE MR)	FRIDAY, THE 7 th DAY OF
)	
JUSTICE MCEWEN)	JANUARY, 2022

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

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

STAY EXTENSION ORDER

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

ON READING the motion record of the Applicant, including the affidavit of Raymond Tong, sworn December 30, 2021, and the exhibits thereto (the "**Tong Affidavit**"), and the second report of msi Spergel Inc., in its capacity as monitor of the Applicant (the "**Monitor**"), to be filed in support of this motion, 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 ● sworn December ●, 2021:

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

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

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

to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor, the Applicant and their respective agents in carrying out the terms of this Order.

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

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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